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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This rule revises the delegations of authority by the Secretary of Agriculture to accommodate the provisions of House Joint Resolution 395, making further continuing appropriations for the fiscal year ending September 30, 1988 (Pub. L. 100–202; 101 Stat. 1329). The rule delegates authority from the Secretary to the Assistant Secretary for Special Services and to the Chiefs of the Forest Service and Soil Conservation Service. The rule also removes the delegations of authority formerly granted to the Assistant Secretary and Deputy Assistant Secretary for Natural Resources and Environment and reserves to the Secretary certain authorities formerly reserved to the Assistant Secretary for Natural Resources and Environment.

EFFECTIVE DATE: This rule is effective May 23, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Rice, Deputy Chief for Administration, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–6707 or John W. Peterson, Deputy Chief for Administration, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013 (202) 447–6297.

SUPPLEMENTARY INFORMATION: The act making further continuing appropriations for fiscal year 1988 abolished the office of the Assistant Secretary for Natural Resources and Environment and established a new office of Assistant Secretary for Special Services. The action necessitates revision of the delegations of authority by the Secretary of Agriculture to provide for the orderly continuation of forestry, soil conservation, and environmental programs of the Department.

The revisions of delegated authority in this rulemaking essentially continue the delegations of authority to the Chiefs of the Forest Service and Soil Conservation Service previously delegated by the Assistant Secretary for Natural Resources and Environment. The rule, however, does grant a few new authorities to each Chief that were formerly exercised by the Assistant Secretary. The delegation of these additional authorities is necessary to achieve the manageable assignment and performance of responsibilities within the Department.

The new authorities delegated to the Chief of the Forest Service include:

1. Authority to issue proposed rules. Except for final rules issued pursuant to 36 CFR 261.70, the authority to issue final rules is reserved to the Secretary.

2. Authority to approve the acquisition of lands or interests in lands under the Weeks Act of March 1, 1911, and other authorities up to $250,000 in value. Delegation of this authority is consistent with the scope of the Chief's other authorities for land acquisition. Under current delegations set forth at 7 CFR 2.60(a)(2), the Chief has long had authority to approve acquisition of lands for addition to the National Forest System except for Weeks Act acquisitions of $25,000 or more. Weeks Act acquisitions through purchase or exchange represented only 11% of the total acquisitions by the Forest Service in 1987.

3. Authority to divide into and designate as national forests contiguous tracts of 3,000 acres or less acquired under or subject to the Weeks Act of 1911, as amended. The authority to divide and designate all other lands acquired under or subject to the Weeks Act is reserved to the Secretary.

4. Authority to perform all responsibilities of the Secretary under the Wild and Scenic Rivers Act, except recommendations on establishing new rivers or adding to existing rivers. This authority includes, but is not limited to, making determinations on issuance of water resource project licenses and permits, conducting comprehensive planning for Wild and Scenic Rivers on National Forest lands, and administering units of the National Wild and Scenic Rivers System and has been exercised by the Chief for many years under the authority to administer and manage the National Forest System. Because questions as to the Chief's authority have arisen from time to time, the Department is taking this opportunity to expressly delegate this authority to the Chief.

This final rule also makes several technical corrections and clarifications to existing delegations to the Chief of the Forest Service. Specifically, the rule:

1. Revises the characterization of the term forestry as used in the delegations to be consistent with the congressional direction for management of the resources of the National Forest System as set forth in the Multiple-Use, Sustained-Yield Act of 1960 (16 U.S.C. 528–531) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

2. Revises the Chief's authority to act as custodian of Bankhead-Jones Farm Tenant Act lands to include authority to administer reserved and reversionary interests in lands previously conveyed to States or local agencies. The existing delegation clearly assigned responsibility to the Forest Service to oversee leases and sale contracts. However, it inadvertently failed to provide recognition that the Forest Service also administers any reservations that may have been made when Title III lands were conveyed to others. In many cases, Title III lands were granted to States and local governments with a provision that if not used for public purposes, the lands would revert to the United States. The Forest Service has administered these interests since 1954, and the change will reflect that fact.

Wherever possible, the text of existing forestry-related delegations has been revised for clarity. In addition, it should be noted that the order and paragraph designations of delegated authorities to the Chief of the Forest Service are not identical to the arrangement currently in 7 CFR 2.60. Transfer of the Chief's authorities to a new section necessitated new enumerations. To avoid the confusing double paragraph enumerations (aa)-(zz), similar and closely related authorities have been grouped together. Finally, legal citations to authorizing statutes have been

corrected or added for several delegations. None of these technical changes is intended to change the scope, nature, or exercise of the delegated authorities to the Chief of the Forest Service.

Of the authorities related to soil and water conservation programs previously delegated to the Assistant Secretary for Natural Resources and Environment, the authority to approve and transmit to Congress comprehensive river basin reports in now delegated to the Chief of the Soil Conservation Service.

All other authorities related to soil and water conservation programs previously reserved to the Assistant Secretary for Natural Resources and Environment are now reserved to the Secretary. These are as follows:

1. Authority to execute cooperative agreements and memoranda or understanding for cooperation with soil and water conservation and similar districts;

2. Authority to evaluate and coordinate land use policy and to administer certain functions and responsibilities under the Farmland Protection Policy Act;

3. Authority to give final approval to and transmit to Congress watershed work plans that require congressional approval; and

4. Authority to approve additions to existing authorized Resource Conservation and Development projects. The authority to designate new project areas for resource conservation and development program assistance continues to be reserved to the Secretary.

This rule also delegates authority to the Assistant Secretary for Special Services who serves primarily in an advisory capacity to the immediate Office of the Secretary of Agriculture on significant matters affecting Forest Service, Soil Conservation, and environmental activities of Department agencies. The Assistant Secretary also is delegated authority to render the decisions of the Secretary in administrative appeals of decisions of the Chief of the Forest Service arising from National Forest System management pursuant to 36 CFR 211.18(f) (1)(iv) and (2). These authorities are codified at § 2.19. Finally, § 2.59 is revised to delegate authority to the Deputy Assistant Secretary for Special Services to act for the Assistant Secretary when that officer is absent or unavailable.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7 of the Code of Federal Regulations is hereby amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Revise § 2.19 to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Special Services.

The following authorities are delegated by the Secretary of Agriculture to the Assistant Secretary for Special Services:

(a) Analyze, recommend and provide advice to the Secretary regarding significant planning, program, and policy issues affecting the Forest Service and the Soil Conservation Service.

(b) Assist in assuring that natural resource and environment activities of Department agencies are properly coordinated. This authority includes:

(1) Coordinating issues arising in the context of legislative proposals and reports, regulations, budgets, correspondence, and any other matters involving such issues.

(2) Representing the decisions of the Secretary in such matters with other Executive Branch agencies, Department agencies, the Congress, interested groups, and the general public.

(3) Serving as chair of the Department's Natural Resources and Environment Committee, which is responsible for coordinating the Department's planning with respect to such matters as endangered species issues, ground and surface water quality, as well as rangeland, wildlife, and other related issues of concern in the administration and implementation of USDA programs and activities.

(c) Render decisions of the Secretary in administrative appeals of decisions made by the Chief of the Forest Service pursuant to 36 CFR 211.18(f) (1)(iv) and (2).

§ 2.20 [Removed and reserved]

3. Remove § 2.20.

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

4. In Subpart D, add new §§ 2.42, 2.43, 2.44, and 2.45 to read as follows:

§ 2.42 Delegations of authority to the Chief of the Forest Service.

The following delegations of authority are made by the Secretary of Agriculture to the Chief of the Forest Service:

(a) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being.)

(b) Protect, manage, and administer the national forests, national forest

purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisitions of land under the Weeks Act of March 1, 1911, as amended, and related acts is limited to acquisitions of less than $250,000 in value.

(1) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(2) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g; 670h, and 670o.

(3) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on national forest lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(4) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(5) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 402(a)).

(6) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(c) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research, renewable resource environmental research, renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(1) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(2) Coordinate activities with other agencies in the Department, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(3) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 1643–1645).

(4) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (16 U.S.C. 3710a–3710c).

(5) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C 3318).

(6) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(d) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas. (16 U.S.C. 2102–2111).

(1) Provide assistance to States in forest resources planning (16 U.S.C. 2107).

(2) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(3) Administer rural fire protection and control programs (16 U.S.C. 2106).

(4) Provide technical assistance on forestry technology for the implementation and administration of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(e) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(f) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(g) Under such general program criteria and procedures as may be established by the Soil Conservation Service:

(1) Administer the forestry aspects of paragraphs (g) (i), (ii), and (iii) of this section on the National Forest System, rangelands within national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands.

(i) Cooperative river basin surveys and investigations program (16 U.S.C. 1006).

(ii) Eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1).

(iii) Small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701 a–h; 16 U.S.C. 1001–1009).

(2) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(h) Provide assistance to other U.S. Department of Agriculture agencies as follows:

(1) To the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–590q).

(2) To the Farmers Home Administration in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1923); and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(i) Jointy administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

(j) Carry out the following Department-wide responsibilities:

(1) Coordinate mapping work of the Department, including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by Department agencies;

(iii) Preparing and submitting required Departmental reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(2) Administer the radio frequency licensing work of the Department, including:

(i) Representing the Department of the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within the Department and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of the Department and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of the Department's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(3) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950 as amended (50 U.S.C. App. 2251 *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(4) Represent the Department on the National Response Team on hazardous spills pursuant to Pub. L. 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 11735.

(5) Represent the Department in all matters relating to responsibilities and authorities under the Federal Water Power Act, approved June 10, 1920, as amended (16 U.S.C. 791–823).

(6) Coordinate Departmental input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 and coordinate Department of Agriculture review of qualifying state and local government coastal management plans or programs prepared under the Act and submitted to the Secretary of Commerce, consistent with section 306 (a) and (c).

(k) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 Note) for the Department of Agriculture.

(l) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor. Administer other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(m) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(n) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(o) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(p) Issue proposed rules relating to the authorities delegated in this section and final rules as provided at 36 CFR 261.70.

§ 2.43 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided at 36 CFR 261.70.

(b) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3000 acres acquired under the subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(c) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), Executive Order 11609).

(d) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249; and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(e) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(f) Approval of acquisitions of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and under other authorities, of $250,000 or more in value for national forest purposes.

§ 2.44 Delegations of authority to the Chief of the Soil Conservation Service.

The following delegations of authority are made by the Secretary of Agriculture to the Chief of the Soil Conservation Service:

(a) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designated to assure:

(1) Quality in the natural resource base for sustained use;

(2) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(3) Quality in the standard of living based on community improvement and adequate income.

(b) Participate in evaluating and coordinating land use policy and in providing national leadership in implementing the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), except as otherwise delegated to the Assistant Secretary for Science and Education and redelegated to the Administrator, Extension Service in § 2.108(a)(22) and the Director, National Agricultural Library in § 2.109(a)(15).

(c) Administer the basic program of soil and water conservation under Pub. L. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–1, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(1) Technical assistance to land users in carrying out locally adapted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(i) Comprehensive planning assistance in nonmetropolitan districts.

(ii) Assistance in the field of income-producing recreation on rural non-Federal lands.

(iii) Forestry assistance, as a part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreads and shelter belts to prevent wind and water erosion of lands.

(iv) Assistance in developing programs relating to natural beauty.

(v) Assistance to other Department agencies in connection with the administration of their programs, as follows:

(A) To the Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs.

(B) To the Farmers Home Administration in connection with their loan and land disposition programs.

(2) Soil surveys, including:

(i) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing of soil surveys.

(ii) Conducting soil surveys for resource planning and development.

(iii) Performing the cartographic services essential to carrying out the functions of the Soil Conservation Service, including furnishing photographs, mosaics, and maps.

(A) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.).

(B) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Soil Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011).

(C) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(d) Administer the watershed protection and flood prevention programs, including:

(1) The 11 authorized watershed projects authorized under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service.

(2) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service.

(3) The cooperative river basin surveys and investigations programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service. Representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(4) The pilot watershed projects under 16 U.S.C. 590a–f, and Pub. L. 156, 83d Congress, except for responsibilities assigned to the Forest Service.

(5) The watershed protection and flood prevention program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Farmers Home Administration and the Forest Service.

(6) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009.

(7) The Emergency Conservation Program under 16 U.S.C. 2201.

(e) Administer the Great Plains Conservation program under 16 U.S.C. 590–(b).

(f) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Farmers Home Administration.

(g) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(h) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), relating to agricultural lands and water.

(i) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445; 30 U.S.C. 1201 *et seq.*), except for responsibilities assigned to the Forest Service and Agricultural Research Service.

(j) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*), except for responsibilities assigned to other USDA agencies.

(k) Administer rural water quality cost-sharing program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(l) Monitor actions and progress of the Department in complying with Executive Orders 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor Agency efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(m) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(n) Perform the following functions in connection with the administration of the Colorado River Basin Salinity Control Act:

(1) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(2) Conduct salinity control studies of irrigated salt source areas;

(3) Provide technical assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(4) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(5) Develop and implement long-term monitoring and evaluation plans to measure and report progress and

accomplishments in achieving program objectives; and

(6) Coordinate salt source planning and monitoring and evaluation activities within the Department and with the Bureau of Reclamation, other federal agencies and representatives of the seven basin states participating in the Colorado River Basin Salinity Control Program (43 U.S.C. 1592(c)).

(o) Provide technical assistance on soil and water conservation technology for the implementation and administration of the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (16 U.S.C. 3831–3844) and carry out responsibilities for conservation of highly erodible lands and wetlands assigned at 7 CFR Part 12 pursuant to sections 1211–1233 of the Food Security Act of 1985 (16 U.S.C. 3821–3823).

(p) Approve and transmit to the Congress comprehensive river basin reports.

§ 2.45 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(b) Providing national leadership in and evaluating and coordinating land use policy and administering responsibilities assigned under the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*) except as otherwise delegated to the Assistant Secretary for Science and Education at § 2.30(a)(75).

(c) Approving additions to authorized Resource Conservation and Development Projects, designating new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance pursuant to 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(d) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

Subpart G—Delegations of Authority by the Assistant Secretary for Special Services

5. Revise the heading for Subpart G as set out above.

6. Revise § 2.59 to read as follows:

§ 2.59 Delegation of authority to the Deputy Assistant Secretary for Special Services.

Pursuant to § 2.19 of this part and subject to policy guidance and direction by the Assistant Secretary, the Deputy Assistant Secretary for Special Services is delegated authority to perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Special Services. This authority is to be exercised only during the absence or unavailability of the Assistant Secretary.

§§ 2.60 and 2.62 [Removed and reserved]

7. Remove §§ 2.60 and 2.62.

For Subparts C And D:

Richard E. Lyng,

Secretary.

Dated: May 16, 1988.

For Subpart G:

George S. Dunlop,

Assistant Secretary for Special Services.

Dated: May 16, 1988.

[FR Doc. 88–11514 Filed 5–20–88; 8:45am]

BILLING CODE 3410–11–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88–063]

Mediterranean Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed the Mediterranean Fruit Fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register on February 10, 1988 (53 FR 3849–3850, Docket Number 87–171), and effective February 5, 1988, we removed the Mediterranean fruit fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from Los Angeles County, California and the regulations are no longer necessary. Comments on the interim rule were required to be postmarked or received on or before April 11, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Los Angeles County that was quarantined, there are approximately 150 small entities that may be affected, including 87 mobile and eight stationary fruit stands, 40 wholesale produce dealers, 15 nurseries, and one farmers' market. The effect of this rule on these entities should be insignificant, since most of their sales are local intrastate and were not affected by the regulatory provisions we are removing; those sales that were affected were generally of articles that could be moved after compliance with treatment or inspection provisions of the regulations.

Based on these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 3849–3850 on February 10, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 18th day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–11513 Filed 5–20–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 211

[INS No. 1105–88]

Alien Commuters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends 8 CFR 211.5 to provide that commuter aliens, in order to retain resident status, must demonstrate either that they have not been unemployed for a continuous period of six months or that they have worked ninety days, in the aggregate, during the twelve-month period preceding their application for admission into the United States. The current regulations governing alien commuters provide for a loss of permanent resident status to commuters who have been out of regular employment in the United States for a continuous period of six months.

DATES: This interim rule is effective May 23, 1988. Comments must be received on or before June 22, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Special Agricultural Worker Program, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536 or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), (202) 633–5309.

SUPPLEMENTARY INFORMATION: The regulations at 8 CFR 211.5 provide that an alien lawfully admitted for permanent residence may reside in a contiguous foreign territory and commute to employment in the United States, but that such alien who has been out of regular employment in the United States for a continuous period of six months shall be deemed to have lost resident status.

Pursuant to section 210(a)(4) of the Immigration and Nationality Act as amended in 1986, special agricultural workers (SAWs) accorded lawful temporary resident status have "the right to travel abroad (including commutation from a residence abroad) * * *, in the same manner as for aliens lawfully admitted for permanent residence." A significant number of SAWs who normally migrate to the United States only once a year for a few months would, if they continue this practice, be out of employment in the United States for a continuous period of six months, and would thus, under the current regulation, lose resident status. Many such workers who might prefer to reside abroad and continue their seasonal migrations for agricultural employment might feel forced to relocate to the United States in order to maintain their resident status. Others might choose to abandon their resident status. In either event the purpose of Congress in enacting section 210 to provide for a legal agricultural workforce would be frustrated. Although aliens granted resident status under section 210 have the right to physically reside in the United States with unrestricted employment authorization, this rule would allow migrants who do not wish to relocate to continue traditional patterns of seasonal migration for agricultural employment. This rule is thus consistent with the intent of Congress in section 210 to provide for a legal agricultural workforce by granting legal status to certain alien agricultural workers.

The Service recognizes an apparent contradiction between section 210(a)(4) of the Act and section 210(a)(3) which provides for a termination of temporary resident status only upon a determination that the alien is deportable. By allowing temporary residents SAWs to commute "in the same manner as aliens lawfully admitted for permanent residence", section 210(a)(4) implies that temporary resident status may be lost, as permanent resident status may be lost for failure to meet the minimum employment standard for commuters. To allow a SAW temporary resident to retain that status when a permanent resident would lose his, would place temporary residents within a more lenient regulatory framework than permanent resident aliens. The intent of Congress was not to allow temporary residents the privilege of that status and the right to reside abroad without a connection to the U.S. labor market, but rather to accord them equal treatment with permanent resident aliens.

This rule effectively embodies the intent of section 210 in according SAWs the same rights to travel and commute from abroad as permanent resident aliens while facilitating their continued employment in agriculture.

Section 211.5(d) is removed as it pertains exclusively to special agricultural worker category which, via this amendment, has been adequately addressed in parts a, b, and c.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

The information collection requirements contained in this regulation have been approved by OMB under the provisions of the Paperwork Reduction Act, under control number 1115–0003.

List of Subjects in 8 CFR Part 211

Alien commuters.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for Part 211 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

2. Section 211.5 (a) and (b) are revised to read as follows:

§ 211.5 Alien commuters.

(a) *General.* Notwithstanding any other provision of this part, an alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his place of employment in the United States. Such commutation may be daily or seasonal for employment which, on the whole, is regular and stable. At the time of each reentry the commuter must present a valid Form I–151, I–551, or I–688 in lieu of an immigrant visa and passport. An alien commuter engaged in seasonal work would be presumed to have taken up residence in the United States if he is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United states for a continuous period of six months shall be deemed to have lost his residence status, notwithstanding temporary entries in the interim for other than employment purposes, unless his employment in the United States was interrupted for reasons beyond his control other than lack of a job opportunity or he can demonstrate that he has worked ninety days in the aggregate during the twelve-month period preceding his application for admission into the United States. Upon loss of status, Form I–151, I–551, or I–688 shall become invalid and shall be surrendered to an immigration officer.

* * * * *

§ 211.5 [Amended]

3. Section 211.5(d) is removed.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

March 31, 1988.

[FR Doc. 88–11506 Filed 5–20–88; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Implementation of Severe Accident Policy; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: On August 8, 1985, the Commission issued a Severe Accident Policy Statement (50 FR 32138) and further information concerning the Commission's plans regarding assessments of postulated severe accidents in both existing and future reactors was issued in NUREG–1070 dated July, 1985. The staff has undertaken to develop guidance to implement the severe accident policy and intends to hold a series of public meetings to gather information and solicit comments on our plans to establish regulatory requirements for future plants related to postulated severe accidents. The first such meeting is planned for Thursday, June 9, 1988 from 8:30 a.m. to 5 p.m. at the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852, phone: (301) 468–1100. Future meetings will also be announced in the **Federal Register**. In this first meeting, the NRC staff will present an overview of the current plans for implementation of the severe accident policy for future plants. A discussion will follow on the selected technical issues listed below. Persons wishing to make presentations on the listed issues should notify the contact listed below at least one week prior to the meeting. Anyone who cannot attend the meeting should send their comments to the contact.

FOR FURTHER INFORMATION CONTACT: Brad Hardin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3733.

SUPPLEMENTARY INFORMATION:

Meeting Topics

The following topics will be discussed in the meeting:

1. How should acceptable safety be demonstrated regarding severe accidents?

• What standards (acceptance criteria) should be applied?

• What form should these standards take?

• Should future plants be safer than existing reactors? How should this be implemented?

• How should severe accident issues be selected for consideration?

• How should the balance between prevention and mitigation be maintained?

• What specific prevention/mitigation design features might be desirable on future reactors, such as:

—Improved shutdown capability
—Core cooling systems
—Capability for feed and bleed decay heat removal
—Capability for PWR automatic depressurization
—Reactor cavity design and other features to mitigate direct containment heating effects
—Containment design (including concrete type) and other features to mitigate corium-concrete interactions
—Hydrogen control features
—Filtered vent systems on containment
—Reactor vessel design
—Equipment survivability

• What other severe accident vulnerabilities are considered important and how should they be addressed?

2. What information should be developed to determine if a design is acceptable with respect to severe accidents?

• PRA?

• Deterministic analyses (e.g., Ch. 15, Standard Review Plan)?

• When in the licensing process should this information be submitted?

• How often during the life of the plant should this information be updated?

3. What role should PRA play in the assessment of the acceptability of reactor designs regarding severe accidents?

• What should be the scope and content of the PRAs?

—Should PRAs include both internal and external events?
—Should PRAs address full power, low power and refueling conditions?
—How should parts of the plant that are not designed or are site specific be handled?

• How should the PRA results be used?

4. How should uncertainties in severe accident phenomenology, plant behavior and analysis methods be treated?

5. Open discussion including other significant topics.

6. Summary.

Dated in Rockville, Maryland this 17th day of May 1988.

For the Nuclear Regulatory Commission.

Thomas L. King,

Chief, Advanced Reactors & Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88-11462 Filed 5-20-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 88-353]

Issuance and Form of Stock in Federal Home Loan Banks

Date: May 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting final amendments to its Federal Home Loan Bank System Regulations ("Regulations") to authorize the capital stock of a Federal Home Loan Bank ("Bank") to be represented in uncertificated, *i.e.*, book entry form. Currently, the Regulations provide for Bank stock to be issued in certificated form only, but on the basis of an earlier legal opinion by the Board's Office of General Counsel some Banks are now using uncertificated stock. The amendment would clarify a Bank's authority both to issue uncertificated stock and to convert certificated stock to book entry form. No Bank that converts to a book entry system will be required to issue stock in certificated form.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: William J. Carey, Director, Bank Liaison Division, Office of the District Banks, at (202) 377-6656; or Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, at (202) 377-6447, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Federal Home Loan Bank Act ("Act"), every institution that becomes a Bank member must make an "original stock subscription * * * [in] an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than $500." 12 U.S.C. 1426(c) (1982) and Supp. III 1985). Thereafter, the amount of Bank stock that the member is required to hold is adjusted annually by the Bank in accordance with the original subscription formula. *Id.*

While the Act established the minimum amount of a member's Bank stockholdings, it does not explicitly prescribe the manner in which existence of such interests may be evidenced. Under modern corporate practice, securities can be either certificated—*i.e.*, represented by a physical instrument—or uncertificated—*i.e.*, evidenced by an entry on the books of the issuer. *See* U.C.C. 8-102 (a) and (b) (1979). Despite the widespread acceptance of uncertificated securities by corporations generally, the Banks for a number of years have been directed by § 522.10 of the Regulations to issue a "certificate" to each new member in the amount of its initial stock subscription. 12 CFR 522.10 (1987). The regulatory language had generally been construed to mean that Banks could fill initial stock subscriptions and make subsequent annual stockholding adjustments solely through the use of certificated shares.

In 1979, a legal opinion of the Board's Office of General Counsel reviewed the statutory authority underlying § 522.10 and concluded that nothing in the Act prohibited issuance of uncertificated Bank stock. On the basis of this ruling at least two banks began using uncertificated stock. Due to an oversight, however, the text of § 522.10 was never changed to incorporate the revised legal position.

On July 29, 1987, the Board proposed these amendments both to rectify the inadvertent omission of an express authorization for issuance of Bank stock in book entry form in § 522.10 of the Regulations and to promote administrative efficiency by streamlining a routine Bank procedure in conformance with an accepted modern corporate practice. On the basis of the public comments and staff analysis, the Board has decided to adopt the amendments substantially as proposed with one exception.

In response to the proposal, the Board received three public comments from an industry trade association, an insured institution and a Bank. Both the trade association and the insured institution favored adoption of the amendments without further modification. The Bank observed that under the proposed language a member would have been able to obtain certificated stock upon written request, even though an issuing Bank might have converted to a book entry system, and expressed concern "that the ability of institutions to ask for certificated stock on an exception basis would lead to a significant additional administrative burden and unnecessary cost". Among the drawbacks noted were additional costs to a Bank associated with the required maintenance of two accounting systems and potential loss of dividends to members relating to redemptions of physical stock certificates.

In the Board's view, the concerns expressed by the commenting Bank are well justified. Gains in administrative efficiency contemplated by a switch to a book entry system could largely be squandered if two types of stock continued to be available. Therefore, the Board has decided to eliminate a member's option to receive certificated stock in Banks that have converted to the book entry form. Otherwise, the text of the proposal is essentially unchanged.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, the small entities to which the final rule applies are the 1,651 insured member institutions of the Bank System which had assets totaling $100 million or less as of December 31, 1986. There are no feasible alternatives that would achieve the Board's principal goal of correcting a flaw in existing regulatory procedures.

List of Subjects in 12 CFR Part 522

Federal home loan banks, Conflict of interests.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 522, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6-7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426-1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs.

402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp. p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Section 522.10 is revised to read as follows:

§ 522.10 Issuance and form of stock.

A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of its stock subscription but the Bank shall not transfer stock so issued until it has received full payment therefor. Stock may be issued in certificated or uncertificated form at the discretion of the Bank. A Bank may convert all outstanding certificated stock to uncertificated form at its discretion. If a member with stock in certificated form changes its name, a new certificate shall be issued.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11454 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Parts 545 and 563

[No. 88–355]

Adjustable-Rate Mortgage Home Loan Disclosures

Date: May 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting and publishing amendments to its regulations regarding the disclosures and notices that lenders must give to borrowers concerning adjustable-rate mortgage ("ARM") home loans. The changes are being made in conjunction with the Board of Governors of the Federal Reserve System ("FRB"), the Office of the Comptroller of the Currency ("OCC"), and the Department of Housing and Urban Development ("HUD") working through the Federal Financial Institutions Examination Council ("Exam Council" or FFIEC"). The purposes of the revisions are to improve the adequacy of information given to consumers shopping or applying for ARMs and to relieve lenders of the burden of duplicative federal regulations. The changes will enact the unanimous Exam Council recommendations of August 1986. As amended, the Board's regulations will require lenders to provide to a prospective borrower a clear and concise description of the lender's ARM program(s), including a historical example, either when an application form is given to the consumer or before the consumer pays a non-refundable fee, whichever is earlier. The new rule changes the timing for ARM disclosures and simplifies disclosures concerning the ARM program(s) being offered to the consumer, but continues the use of the booklet titled, *Consumer Handbook on Adjustable Rate Mortgages* ("ARMs Handbook"). A provision referencing the maximum interest rate cap requirement of the Competitive Equality Banking Act of 1987 is also included.

The FRB published its final rule on ARM disclosures on December 24, 1987 (52 FR 48665), and the OCC published its final rule on March 11, 1988 (53 FR 7885).

EFFECTIVE DATE: May 23, 1988, but optional compliance until October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen D. Johnson, Attorney/Advisor, (202) 653–2679, Division of Consumer and Civil Rights, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is directed by Title IV of the National Housing Act, 12 U.S.C. 1724–30, to assure the sound and safe operation of institutions the accounts of which are insured by the FSLIC ("insured institutions(s)"). Pursuant to that mandate, the Board is adopting revisions and clarifications to its regulations regarding the initial disclosures and subsequent notices that lenders must give to prospective borrowers and loan customers. The revisions implement a simple and uniform method of initial disclosures for ARMs. The disclosures were developed in consultation with other financial regulatory agencies.

Currently, four federal agencies require that lenders subject to their regulations provide specific disclosures about ARMs to borrowers. Under Regulation Z (12 CFR Part 226), the FRB requires that an ARM be described briefly to consumers. In contrast to Regulation Z, the regulations of the Board, OCC, and HUD call for more extensive, detailed information. The Board requires ARM disclosures for federal associations and also for certain other lenders that wish to market their loans to federal institutions (12 CFR 545.33). In addition, insured institutions, including federal associations, are also required to make certain ARM disclosures (12 CFR 563.9–9). The OCC mandates ARM disclosures for national banks and other lenders that seek to market their loans to national banks (12 CFR Part 29). Under the "Alternative Mortgage Transaction Parity Act of 1982", 12 U.S.C. 3802, state-chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following the rules of the Board or the OCC. Finally, HUD prescribes disclosures for lenders wishing to participate in the Federal Housing Administration ("FHA") insurance program (24 CFR Parts 203 and 234).

The Exam Council members and HUD believe that this regulatory structure which requires different disclosures by different lenders delivered at different times, is causing problems for both consumers and mortgage lenders. The ability of consumers to understand and make important decisions about ARMs before entering into these transactions may be hampered by their receipt of different information about ARM programs depending on what type of lender they have approached. This problem is exacerbated by the variety of ARM products now being offered as well as the complexity of some of these programs. In addition, consumers often pay an application fee prior to receiving any disclosures about the lender's loan programs. At the same time, these regulatory requirements have proved burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or to a national bank may have to make disclosures under both agencies' rules. Furthermore, it has been claimed that the variety of regulatory requriements has hampered the development of a thriving secondary market for ARMs.

Revisions to federal ARM disclosure requirements were initially requested by members of Congress, financial industry trade associations, and consumer groups in 1984. Initial requests called for uniform federal requirements for disclosures including a "worst case" statement of the highest interest rate of payment that might apply to an ARM. After extensive deliberations by a task force, the Exam Council made an initial recommendation in November 1984. As outlined by the Exam Council, the

required disclosures would have been specific to each consumer transaction and included a "worst case" payment example based on hypothetical index rate increases of two percentage points per year for three years. Based on these recommendations, the FRB proposed amendments to Regulation Z on May 15, 1985 (50 FR 20221). Many of the 500 public comments received by the FRB on the 1985 proposal objected to both the potential burden on creditors of requiring transaction-specific disclosures and to the assumptions about index rate movement.

For more than a year following the FRB proposal of the initial disclosure scheme, the Exam Council considered alternative plans for uniform ARM disclosures. In August 1986, the Exam Council approved a proposal requiring that creditors provide two types of disclosures to consumers seeking information about ARMs: (1) The *Consumer Handbook on Adjustable Rate Mortgages*, or a suitable substitute, and (2) disclosures that fully describe each of the lender's ARM programs, with a 15-year historical example of how changes in the index or formula values used to compute interest rates would have affected interest rates and payments on a $10,000 loan. The example, starting in 1977, would be updated annually until a 15-year history is shown; therafter, it would reflect the most recent 15-years of index values. In addition, the maximum interest rate and payment that could result under the program for a $10,000 loan would be disclosed.

On November 24, 1986, the FRB again proposed to amend Regulation Z (51 FR 42241). In a parallel action, on February 5, 1987, the Board published proposed amendments to its ARM disclosure regulations by requiring disclosures similar to those proposed by the FRB (52 FR 3665). The regulation, as proposed, would have covered all loans secured by borrower-occupied property (including open-end equity lines of credit). Finally, on October 2, 1987, the CCC proposed to delete its ARM disclosure regulation and to defer to revised Regulation Z disclosure requirements (52 FR 36953).

The Board received 86 comments during its 30-day comment period in February and March, 1987. The majority (61) came from the thrift industry, four (4) were from Federal Home Loan District Banks, and the balance were sent by commercial banks, mortgage companies, trade associations, law firms, and consumer groups. Ten (10) comment letters expressed unqualified support for the Board's proposal. Twenty-one (21) of the commenters generally opposed any new (and in some cases existing) ARM disclosures; thirty-four (34) of the commenters endorsed uniform ARM disclosures with critical comments on one or more provisions; and the balance only commented on specific provisions. Nine (9) commenters supported the proposed changes based specifically on the need for uniformity among the federal regulatory agencies.

Almost one-half (41) of the commenters opposed the use of the 15-year historical example of the index movements, most seeing the example as confusing to consumers and burdensome to lenders. Fifteen (15) of these letters were virtually identical and came from a single Bank System district. A number of the commenters opposed to the historical example did not appear to understand that every movement of the index in the 15-year period would not have to be disclosed and that the example would not have to be transaction-specific. The FRB proposal of May, 1985, requiring a "worst case" disclosure using a hypothetical example in which the index increased by two percentage points per year for three years, drew overwhelming opposition when it was proposed, but several commenters recommended it as an alternative to the 15-year example. Reducing the historical example to ten (10) years or less was suggested. Only one commenter suggested a longer history. The Board, after reviewing the comments and on its own analysis, believes that the 15-year historical example best serves consumer needs for disclosure in selecting a loan program. The Board also believes that the example is not burdensome to lenders, because it is not transaction-specific and need only be updated once a year. It is also an essential part of the Exam Council recommendation. Uniform initial disclosure would not be possible without it.

The 15-year historical example will not be based on the actual amount to be borrowed. Lenders will be able to pre-print the disclosures for each loan program and give them to consumers with an ARMs Handbook. The provision that the example be based on the historical performance of individual indices, rather than on assumed rate increases, reflects the revised recommendation of the FFIEC. Lenders also will be required to include a statement on the disclosure form explaining to consumers how to calculate their actual monthly payment amount for a loan amount other than $10,000. The example based on $10,000 also reflects the recommendation of the FFIEC and is premised, in part, on the rationale that figures based on a $10,000 example provide information that consumers can use with minimal difficulty to calculate their actual monthly payments for a specific transaction. The amendments require that the example shown be based on the history of the specific index or formula to be used in the loan program. The index values used in the example will begin with the value for 1977 and be updated annually to add the values for additional years until a 15-year history is shown. For example, the disclosures for an ARM made in 1988 will include index values for each year from 1977 through 1987. In each subsequent year until 1991 a lender's disclosures will include the index value for one more year. From that time forward, lenders will show a "rolling" history of index values, updated annually, for the preceding 15 years.

If the values for an index have not been available back in 1977, lenders need only go back as far as the values have been available in giving the history and may start the example at the year in which values are available. The history should reflect the method of choosing values for each program. For instance, if an average of index values is used, averages would be used in the history, but if a single index value is used, single index values would be shown. Lenders should assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan program; they may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history. Only one index value per year need be shown, even if the program provides for adjustments to the interest rate or payment more than once in a year. In such cases, the lender may assume that the index rate remained constant for the full year for the purpose of calculating the interest rate, payment, and loan balance. Updating will be necessary only once each year to reflect the most recent year's index value. New disclosures would be required when an ARM program changes.

The payment and outstanding loan balance figures in the example must reflect all significant loan program terms. For example, features such as rate and payment caps, a discounted interest rate, negative amortization, and interest carryover need to be taken into account by lenders in calculating the payment and outstanding balance figures. Because disclosures will be

given early, lenders will need to assume a value for the margin in order to do the calculations for the example. Lenders may select a margin that they have used during the preceding six months and disclose on the form that the margin is one that they have used recently. The margin selected may be used until a lender updates the disclosure form to reflect the most recent 15 years of index values. Similarly, to the extent that the ARM program has a discounted initial rate, lenders also will be permitted to assume an amount by which the initial rate will be discounted—which is representative of the amount of discounts by the lender during the preceding six months—and disclose on the form that the initial rate has been discounted to the extent of other discounts offered by the lender recently. The provision for a representative discount was added to respond to the concerns expressed by lenders about the need for individual program disclosure forms to reflect the amount of every discount offered by the creditor—amounts that could fluctuate daily depending upon market conditions.

The amendments also require disclosure of the maximum interest rate and payment. These disclosures would be calculated based on a $10,000 loan that is originated at the most recent interest rate shown in the historical example and would assume that the interest rate then increases as rapidly as possible under the program. Thus, in a loan with interest rate limitations, or "caps," of 2 percentage points per year and 5 percentage points for the life of the loan, the maximum interest rate would be 5 percentage points higher than the most recent rate shown in the historical example, and the loan would not reach the maximum interest rate increase until the fourth year of the loan because of the 2 percentage points annual limitation. Consequently, the maximum payment disclosed would reflect the amortization of the loan during that period. Finally, to enable HUD/FHA lenders to follow the new requirements, this provision has been modified also to require a statement of the initial interest rate and payment for that loan. The Board believes that this requirement will also benefit consumers by providing a point of reference for evaluating the stated maximum levels for an ARM. As amended, the regulation does not preclude lenders from also providing customers with alternative projections, such as a best case example, provided that the examples are factual and accurate as required by the Board's advertising regulations (12 CFR 563.27(a)).

The new regulations ensure that every consumer considering applying for an ARM will receive a brochure at an early stage in the application process. The *ARMs Handbook*, developed by the Board and the FRB, may be used by lenders to fulfill this requirement. The amendments would also permit lenders to provide a "suitable substitute" in place of the *ARMs Handbook*. Rather than the Board's evaluating whether an individual lender's ARM brochure is a "suitable substitute," individual lenders should make a good faith determination of whether a brochure is, in fact, a suitable substitute. The Board envisions that substitutes must be, at a minimum, comparable to the *ARMS Handbook* in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular ARM programs than is contained in the *ARMs Handbook*.

The *ARMs Handbook* has been reprinted for resale by private publications companies and by various trade organizations such as the American Bankers Association, the Mortgage Bankers Association, the National Council of Savings Institutions, and the U.S. League of Savings Institutions.

The Board's proposal to require ARM disclosures in all adjustable-rate loans secured by the borrower's dwelling, whether the loans were open-end loans (such as home equity loans) or closed-end loans (such as the traditional 30-year mortgage), was expressly opposed by twenty-four (24) of the commenters. The vast majority of these comments urged that open-end credit, specifically home equity loans, not be covered by the ARM disclosure regulation. The value of the proposed disclosures was questioned for loans with an unknown amount, an unknown term, and a changing interest rate. Many commenters cited the complexity and ongoing evolution of home equity loans as critical reasons for not requiring the same disclosures for home equity loans as for traditional ARMs. Consumer groups, on the other hand, favored coverage of home equity loans.

Since the Board's proposal in February 1987, home equity loans and similar open-end credit have been the subject of review by consumer groups, financial regulatory agencies, and Congress. In addition, the FRB has published for comment amendments to Regulation Z specifically for home equity loans. Therefore, the Board has decided to limit these ARM disclosure regulations to closed-end credit in keeping with the regulations of the other federal financial regulatory agencies and the recommendations of the Exam Council.

Several commenters objected to the Board's proposal to include breach by the borrower in the disclosures required in § 563.9–9(d)(5), rather than exclude it as the current regulations do in 12 CFR 545.33(f)(9). The principal objection was that the proposed language could be read to require an extensive legal treatment of borrower and lender rights and remedies. The Board has decided, therefore, to exclude borrower breach from the amended regulation.

The Board also received questions concerning the disclosures required for costs and charges incidental to an ARM, such as hazard insurance, mortgage insurance, taxes and similar expenses that are subject to change. As amended, the regulations do not require new disclosures or projections for these incidental expenses, but the fact that they may change and an explanation of how they will be paid should be included in the escrow disclosures required by § 563.9–9(d)(3). Such disclosure is in addition to any treatment required by other statutes or regulations, such as the Real Estate Settlement Procedures Act of 1974, and Regulation Z.

Twenty (20) commenters criticized the adjustment notice provision (§ 563.9–9(c)) proposed by the Board, pointing out that it did not comport with the proposal of the FRB and could be impossible to comply with for loans adjusting daily or monthly. Upon review of the comments and the proposed language, the Board has decided to adopt the same adjustment notice language as the FRB. The regulation provides for an adjustment notice at least once each year during which an interest rate adjustment is implemented without an accompanying payment change. In the case of a payment change, an adjustment notice must be given at least 25, but not more than 120, calendar days before a payment at the new level is due. This action will provide consumers with adequate notice of interest rate and payment changes and be easier for lenders to comply with than previous requirements.

The subsequent disclosure provision requires notice of the adjusted payment amount, interest rate, index rate, and loan balance. The lender also will be required to disclose the extent to which any increase in the interest rate has not been fully implemented at the adjustment date (for example, if the new index plus margin would exceed an interest rate adjustment cap), and the payment that would be required to fully

amortize a loan (if different from the payment already disclosed). In transactions providing that payment adjustments accompany interest rate adjustments, lenders would be required to send borrowers notice at least 25, but not more than 120, days before the due date of a payment at the new level. The minimum advance notice was revised to 25 days to track the notice requirements of the FRB and to provide creditors more flexibility in giving adjustment notices for the variety of loans that will be subject to the new requirements. At the same time, the Board believes that the timing of the disclosures will provide consumers with adequate advance notice of adjusted payment amounts. The timing was clarified to refer to calendar days and a requirement that the disclosure must be delivered or placed in the mail within the specific period was added. Finally, the timing provision was tied to the due date of the payment at a new level rather than to the effective date of the interest rate adjustment. Notice is required to be given whenever interest rate adjustments and corresponding payment adjustments can be made periodically under the loan agreement but are not made because, for example, the index values have not changed or an interest rate cap has prevented any such adjustments. However, lenders are required to send borrowers notice only once each year if interest rate adjustments are made without a corresponding payment adjustment. Thus, in transactions where the interest rate may be adjusted more frequently than the payment, the lender would be required to send at least one notice each year during which there have been interest rate adjustments but no corresponding payment adjustments.

The Board notes that the notice of adjustment provision (§ 563.9–9(c)) applies to all loans made subject to the regulation herein adopted, and to loans subject to the adjustment provision currently in effect as set forth in 12 CFR 545.33(e)(4)(1987).

In the case of an ARM that may be converted to a fixed-rate loan, lenders should provide, at the time of application, all requried initial ARM disclosures specified in § 563.9–9(b) including the conversions feature. When a borrower subsequently exercises the option to convert, such borrower should receive a final adjustment notice setting forth the information required by § 563.9–9(c) for the new fixed-rate loan.

An assumption of an ARM is not an event requiring new initial disclosures. Lenders must still provide to the new borrower the applicable Regulation Z disclosures at the time of the assumption, as well as subsequent adjustment notices required by § 563.9–9(c).

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section of this rule.

2. *Issues raised by comments and agency assessment and response.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section of this rule. To summarize, in response to comments the Board has (a) reduced the coverage of the rule from all ARMs secured by borrower occupied property (as proposed) to closed-end loans of one year or longer secured by borrower occupied property; (b) revised the subsequent notice provision to match the regulatory language used by the FRB in Regulation Z (12 CFR Part 226); (c) revised the uniform initial disclosures provisions to match the regulatory language used by the FRB in Regulation Z; (d) added a provision on maximum interest rate caps implemented by the FRB; and (e) made numerous technical and language changes suggested by comments.

3. *Significant alternatives minimizing small-entity impact and agency response.* The rule should have no untoward impact on small institutions. Properly complied with, the rule should reduce and simplify document preparation for all institutions. In addition, the rule should benefit the secondary market for ARM loans to the advantage of all lenders regardless of size.

List of Subjects in 12 CFR Parts 545 and 563

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic fund transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 545, Subchapter C, and Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.33 by revising the introductory text of paragraph (e) by revising paragraph (e)(4); by removing paragraph (f) and redesignating paragraphs (g) and (h) as the new paragraphs (f) and (g) respectively; and by adding a new paragraph (h) to read as follows:

§ 545.33 Home loans.

* * * * *

(e) *Adjustments.* For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term to maturity shall comply with the limitations of this paragraph (e). The disclosure and notice requirements of § 563.9–9 shall also be complied with.

* * * * *

(4) Adjustment notices shall be provided in accordance with § 563.9–9(c). In the case of an open-end line-of-credit loan, notice of an adjustment to the payment or the balance need not be given if the adjustment reflects advances taken by the borrower under the line of credit, and advance notice of a change in the interest rate permitted by the loan contract (and any resulting change in the payment) need not be given. In the case of a non- or partially-amortized loan, (including a loan with a "call" provision), an association shall provide the borrower with notice of maturity at least 90 but not more than 120 days prior to the date of expected maturity.

* * * * *

(h) *Notice of housing creditors regarding alternative mortgage transactions.* Pursuant to Title VIII, Pub. L. 97–320, housing creditors that are not commercial banks, credit unions, or Federal associations may make alternative mortgage transactions (as defined by section 803 of Pub. L. 97–320 and as further defined and described by applicable regulations identified herein) notwithstanding any state constitution, law or regulation. In accordance with section 807(b) of Pub. L. 97–320, the provisions listed below are identified as

appropriate and applicable to the exercise of this authority, and all regulations not identified herein are deemed inappropriate and inapplicable: Section 545.32(b)(3) and (4), § 545.33(c) and (e), and § 563.9–9. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever appropriate.

Appendix—[Removed]

3. Amend Part 545 by removing the Appendix located at the end of the Part.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

4. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

5. Section 563.9–9 is amended by revising the heading of the section, paragraphs (a)(1), (b) and (c); by redesignating paragraphs (a)(2) and (a)(3) as the new paragraphs (a)(3) and (a)(4); by adding a new paragraph (a)(2); by redesignating paragraph (d) as new paragraph (f); by adding new paragraphs (d) and (e); and by revising newly redesignated paragraph (f) to read as follows:

§ 563.9–9 Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and interest rate caps.

(a) * * *

(1) "Adjustable-rate mortgage loan" means a mortgage loan, secured by property occupied or to be occupied by the borrower, providing for adjustments to the interest rate which cause a change in balance, term to maturity, or payment levels other than those established by a fixed, predetermined schedule at the time of contracting for the loan.

(2) "Fixed-rate mortgage loan" means a loan, secured by property occupied or to be occupied by the borrower, on which the rate, the term, and the amount of the payments are fixed at the time of execution of the original loan documents. Fixed-rate mortgage loans may or may not be fully amortizing and include graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.

* * * * *

(b) *Initial disclosures for adjustable-rate mortgage loans.* Insured institutions offering adjustable-rate home loans, except open-end loans, with a term of more than one (1) year and secured by property occupied or to be occupied by the borrower, shall provide two types of written disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Federal Home Loan Bank Board and the Federal Reserve Board, or a suitable substitute.

(2) A loan program disclosure for each adjustable-rate home loan program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:[1]

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the use of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) An historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.

(x) The maximum interest rate and payment for a $10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan.

(xi) The fact that the loan program contains a demand feature.

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) *Adjustment notices.* An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate transaction subject to this § 536.9–9 is an event requiring new dislosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following written disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to amortize fully the loan at the new interest rate over the remainder of the loan term.

(d) *Fixed-rate and adjustable-rate mortgage loan disclosures.* Not later than three business days following receipt of a written application for a fixed-rate or adjustable-rate mortgage loan, insured institutions shall disclose in writing to the applicant the information specified in this paragraph (d). Disclosures shall be provided for all such loans whether originated by the lender or purchased from an affiliate (as

[1] A sample disclosure form may be found in the **Federal Register** issue of May 23, 1988 or may be obtained from the Board.

defined in § 583.15) or purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. Disclosures shall be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker. Loans purchased from an unaffiliated entity in the usual course of business, and previously originated by the entity without guarantees, agreements or understandings that they would be purchased by the institution, may be purchased notwithstanding these disclosures requirements, provided that such loans comply with the disclosure requirements of other federal laws and regulations to which they may be subject. The disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of these disclosure requirements is to provide a full understanding of the operations and consequences of the loan for which the borrower is applying. If insured institutions elect to disclose the information in paragraphs (d)(1) through (d)(4) of this section as part of their advance disclosures under paragraph (c) of this section, disclosed information need not be repeated. Disclosures do not constitute a commitment on the part of an institution to make a loan to the applicant. At a minimum, the following shall be disclosed:

(1) If the loan contract contains a due-on-sale clause, what rights the lender has under the clause.

(2) If the loan contract authorizes the imposition of a late charge or a prepayment penalty the amount of the charge or penalty or the manner in which it is to be determined. If the method of calculating the charge or penalty may vary over the term of the loan, the lender shall indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the borrower.

(3) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of escrow payment is established, how the borrower will be notified of any deficiencies in the borrower's escrow account, how such deficiencies will be corrected, whether the borrower will have the option of correcting the deficiency with either pro-rated monthly payments or a lump-sum payment, how any surplus will be returned to the borrower, and the rights of the lender if the borrower fails to make the escrow payments.

(4) In the case of non- or partially-amortized loans (including a loan giving the lender the right to call the loan due and payable after a period of time or upon the occurrence of an event external to the loan), a statement of what information will be contained in the notice of maturity, how far in advance notice of maturity will be provided, whether the institution has unconditionally obligated itself to refinance the loan, and whether there will be a large payment due at maturity or upon call of the loan.

(e) *Maximum interest rate caps.* All insured institutions making adjustable-rate loans, originated on or after December 8, 1987, whether open-end or closed-end, shall comply with Regulation Z (12 CFR 226.30) by specifying in their credit contracts the maximum interest rate that may be imposed during the term of the obligation.

(f) *Exception.* The disclosures in paragraph (b) of this section are not required in connection with the extension of consumer credit as defined in § 561.38 of this subchapter even if it is secured by a borrower-occupied home as long as the home is not the primary security for the loan.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Adjustable-Rate Mortgage Disclosure Sample

This disclosure describes the features of the Adjustable Rate Mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment are Determined

- Your interest rate will be based on an index rate plus a margin.
- Your monthly (principal and interest) payment will be based on the interest rate, loan balance, and loan term.
- The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.
- Information about the index rate is published weekly in the *Wall Street Journal.*
- Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.
- Your initial interest rate will be discounted, and not based on the index used to make later adjustments. Ask us for the amount of current interest rate discounts.

How Your Interest Rate Can Change

- Your interest rate can change yearly.
- Your interest rate cannot increase or decrease more than 2 percentage points per year.
- Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

- Your monthly payment can change yearly based on changes in the interest rate.
- For example, on a $10,000, 30-year loan with an initial interest rate of 9.71% (the rate shown in the interest rate colum below for the year 1987), the maximum amount that the interest rate can rise under this program is 5 percentage points, to 14.71%, and the monthly payment can rise from a first-year payment of $85.62 to a maximum of $123.31 in the fourth year.
- You will be notified in writing at least 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount, and loan balance.

Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1977 to 1987. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount—$10,000
Term—30 years
Payment adjustment—1 year
Interest adjustment—1 year
Margin—3%[1]

- Caps.—2% annual interest rate; 5% lifetime interest rate
- Index.—1-year Treasury Bill adjusted to a constant maturity

[1] This is a margin we have used recently; your margin may be different.

Year (as of first week ending in July)	Index (percent)	Margin [1] (percentage points)	Interest rate (percent)	Monthly payment [4]	Remaining balance
1977	5.72	3	8.72	$78.46	$9,927.64
1978	8.34	3	[2]10.72	92.89	9,874.67
1979	9.44	3	12.44	105.67	9,832.70
1980	8.51	3	11.51	98.79	9,776.04
1981	14.94	3	[3]13.51	113.51	9,731.98
1982	14.41	3	[2]13.72	115.07	9,683.39
1983	9.78	3	12.78	108.25	9,618.21
1984	12.17	3	[3]13.72	114.96	9,554.39
1985	7.66	3	[2]11.72	101.96	9,456.03
1986	6.36	3	[2]9.72	88.13	9,311.25
1987	6.71	3	9.71	88.07	9,151.55

[1] This is a margin we have used recently; your margin may be different.
[2] This interest rate reflects a 2% points annual interest rate cap.
[3] This interest rate reflects a 5% points lifetime interest rate cap.
[4] Payment of principal and interest.

To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by the resulting amount. (For example, in 1987 the monthly payment for a mortgage amount of $60,000 taken out in 1977 would be: $60,000 ÷ $10,000 = 6; 6 x $88.07 = $528.42.)

[FR Doc. 88-11455 Filed 5-20-88; 8:45 am]
BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Interpretive Ruling and Policy Statement No. 88-1; Policy on Selection of Securities Dealers and Unsuitable Investment Practices

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Interpretive ruling and policy statement number 88-1.

SUMMARY: With minor modifications, the NCUA Board has adopted as its statement of general policy for Federal credit unions ("FCU's") the Federal Financial Institutions Examination Council ("FFIEC") supervisory policy entitled "Selection of Securities Dealers and Unsuitable Investment Practices." The FFIEC has recommended that its constituent members adopt the policy.

EFFECTIVE DATE: May 23, 1988.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Timothy P. McCollum, Assistant General Counsel, or Julie Tamuleviz, Staff Attorney, Office of General Counsel, NCUA, at the above address or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: FFIEC, an inter-agency group, has recommended that its constituent members—the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency—adopt its supervisory policy entitled "Selection of Securities Dealers and Unsuitable Investment Practices." The NCUA Board approved the FFIEC supervisory policy, with minor modifications, on April 22, 1988, and authorized its inclusion in NCUA's official system of Policy Statements.

The supervisory policy provides guidance to financial institutions concerning selection of securities brokers and avoidance of unsound investment practices. It is consistent with advice that NCUA has provided to FCU's on numerous previous occasions.

NCUA, in adopting the supervisory policy as its general policy, has made minor modifications to the supervisory policy to clarify that certain investment practices discussed in the statement are not permissible for FCU's. Sections 107(7), 107(8) and 107(15) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8) and 1757(15) and Part 703 of NCUA's Rules and Regulations (12 CFR 703.1-703.4) contain FCU investment and deposit authority. FCU's considering investment in privately-issued mortgage-related securities pursuant to section 107(15)(B) of the Federal Credit Union Act (12 U.S.C. 1757(15)(B)) should also review NCUA Letter to Credit Unions Number 96.

Interpretive Ruling and Policy Statement Number 88-1

Policy on Selection of Securities Dealers and Unsuitable Investment Practices.

Purpose

This issuance is to provide you with recommended procedures to be employed when selecting securities dealers and to advise you of certain securities activities that NCUA and the other Federal financial institution regulators view as unsuitable in an investment portfolio.

Background

The Federal financial institution regulators have become aware of speculative activity which has taken place in a number of financial institutions' investment portfolios. Certain of these institutions have failed because of the speculative activities, and other institutions have been weakened significantly as their earnings and capital have been impaired and the liquidity of their securities has been eroded by the depreciation in their market value.

Speculative activity often occurs when a financial institution's investment portfolio manager follows the advice of securities dealers who, in order to generate commission income, encourage speculative practices that are unsuitable for the investment portfolio.

Recommendations Concerning the Selection of a Securities Dealer

It is common for the investment portfolio managers of many financial institutions to rely on the expertise and advice of a securities sales representative for: Recommendations of proposed investments; investment strategies; and the timing and pricing of securities transactions. Accordingly, it is important for the management of these institutions to know the securities firms and the personnel with whom they deal. An investment portfolio manager should not engage in securities transactions with any securities dealer that is unwilling to provide complete and timely disclosure of its financial condition. Management must review the dealer's financial statements and make a judgment about the ability of the dealer to honor its commitments. An inquiry into the general reputation of the dealer also is necessary.

The board of directors and/or an appropriate board committee should

review and approve a list of securities firms with whom the financial institution's management is authorized to do business. The following securities dealer selection standards are recommended, but are not all-inclusive. The dealer selection process should include:

- A consideration of the ability of the securities dealer and its subsidiaries or affiliates to fulfill commitments as evidenced by capital strength and operating results disclosed in current financial data, annual reports, credit reports, etc.;
- An inquiry into the dealer's general reputation for financial stability and fair and honest dealings with customers, including an inquiry of past or current financial institution customers of the securities dealer;
- An inquiry of appropriate state or Federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers, concerning any formal enforcement actions against the dealer or its affiliates or associated personnel;
- An inquiry, as appropriate, into the background of the sales representative to determine his or her experience and expertise;
- A determination whether the financial institution has appropriate procedures to establish possession or control of securities purchased. Purchased securities and repurchase agreement collateral should only be kept in safekeeping with selling dealers when (1) the board is completely satisfied as to the creditworthiness of the securities dealer and (2) the aggregate value of securities held in safekeeping in this manner is within credit limitations that have been approved by the board of directors, or a committee of the board, for unsecured transactions (see FFIEC Policy Statement adopted October 1985, NCUA's Interpretive Ruling and Policy Statement No. 85–2). Federal credit unions, when entering into a repurchase agreement with a broker/dealer, are not permitted to maintain the collateral with the broker/dealer, reference Part 703 of the National Credit Union Administration Rules and Regulations.

As part of the process of managing a financial institution's relationships with securities dealers, the board of directors may wish to consider including in the code of ethics or conduct a prohibition by those employees who are directly involved in purchasing and selling securities for the institution from engaging in personal securities transactions with the same securities firm that the institution uses for its transactions without specific board approval and periodic review. The board also may wish to adopt a policy applicable to directors, officers or employees concerning the receipt of gifts, gratuities or travel expenses from approved dealer firms and their personnel (also see in this connection the Bank Bribery Law, 18 U.S.C. 215 and interpretive releases).

Objectionable Investment Practices

Financial institution directors are responsible for prudent administration of investments in securities. An investment portfolio traditionally has been maintained to provide earnings, liquidity, and a means of diversifying risks. When investment transactions are entered into in anticipation of taking gains on short-term price movements, the transactions are no longer characteristic of prudent investment activities and should be conducted in a securities trading account. Securities trading of the types described in section I of the attached appendix will be viewed as unsuitable activities when they are conducted in a financial institution's investment account. Securities trading should take place only in a closely supervised trading account and be undertaken only by institutions that have strong capital and current earning positions. Acquisitions of the various forms of zero coupon, stripped obligations, and asset-backed securities residuals discussed in section II of the attached appendix will receive increased regulatory attention and, depending upon the circumstances, may be considered unsuitable activities.

State-chartered financial institutions are cautioned that certain of the investment practices listed in the appendix may violate state law. If any such practices are contemplated, the appropriate state supervisor should be consulted regarding permissibility under state law.

By the National Credit Union Administration Board on April 22, 1988.

Becky Baker,

Secretary of the Board.

Appendix

I. Trading in the Investment Portfolio

Trading in the investment portfolio is characterized by a high volume of purchase and sale activity, which, when considered in light of a short holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. In this situation, a failure to follow accounting and reporting standards, applicable to trading accounts may result in a misstatement of the financial institution's income and a filing of false regulatory reports and other published financial data. It is an unsafe and unsound practice to record and report holdings of securities that result from trading transactions using accounting standards which are intended for investment portfolio transactions; therefore, the discipline associated with accounting standards applicable to trading accounts is necessary. Securities held in trading accounts should be marked to market, or the lower of cost or market, periodically with unrealized gains or losses recognized in current income. Prices used in periodic revaluations should be obtained from sources that are independent of the securities dealer doing business with the institution.

The following practices are considered to be unsuitable when they occur in a financial institution's investment portfolio.

A. "Gains Trading"

"Gains trading" is a securities trading activity conducted in an investment portfolio, often termed "active portfolio management." "Gains trading" is characterized by the purchase of a security as an investment and the subsequent sale of that same security at a profit within several days or weeks. Those securities initially purchased with the intent to resell are retained as investment portfolio assets if they cannot be sold at a profit. These "losers" are retained in the investment portfolio because investment portfolio holdings are accounted for at cost, and losses are not recognized unless the security is sold. "Gains trading" often results in a portfolio of securities with extended maturities, lower credit quality, high market depreciation and limited practical liquidity.

In many cases, "gains trading" has involved the trading of "when-issued" securities and "pair-offs" or "corporate settlements" because the extended settlement period associated with these practices allows speculators the opportunity for substantial price changes to occur before payment for the securities is due.

B. "When-Issued" Securities Trading

"When-issued" securities trading is the buying and selling of securities in the interim between the announcement of an offering and the issuance and payment date of these securities. A purchaser of a "when-issued" security acquires all the risks and rewards of owning a security and may sell the "when-issued" security at a profit before taking delivery and paying for it. Frequent purchases and sales of

securities during the "when-issued" period generally are indications of trading activity and should not be conducted in a bank's investment portfolio. Federal credit unions engaging in when-issued securities trading must follow NCUA's regulation on cash forward agreements.

C. "Pair-Offs"

A "pair-off" is a security purchase transaction which is closed out or sold at, or prior to, settlement date. As an example, an investment portfolio manager will commit to purchase a security; then, prior to the predetermined settlement date, the portfolio manager will "pair-off" the purchase with a sale of the same security prior to, or on, the original settlement date. Profits or losses on the transaction are settled by one party to the transaction remitting to the counter party the difference between the purchase and sale price. Like "when-issued" trading, "pair-offs" permit speculation on securities price movements without paying for the securities. Pair-off transactions using cash forward agreements are impermissible for Federal credit unions. According to NCUA's regulation, cash forward agreements (settlement occurring between 30–120 days) must be settled on a cash basis.

D. Corporate Settlement on U.S. Government and Federal Agency Securities Purchases

Regular-way settlement for transactions in U.S. Government and Federal agency securities is one business day after the trade date. Regular-way settlement for corporate securities is five business days after the trade date. The use of a settlement method (5 business days) for U.S. Government securities purchases appears to be offered by dealers in order to facilitate speculation on the part of the purchaser.

E. Repositioning Repurchase Agreements

Dealers who encourage speculation through the use of "pair-off", "when-issued" and "corporate settlement" transactions often provide the financing at settlement of purchased securities which cannot be sold at a profit. The buyer purchasing the security pays the dealer a small "margin" that is equivalent roughly to the actual loss in the security. The dealer then agrees to fund the purchase by buying the security back from the purchaser under a resale agreement. Apart from imprudently funding a longer-term, fixed-rate asset with short-term, variable-rate source funds, the purchaser acquires all the risks of ownership of a larger amount of depreciated securities for a very small margin payment. Purchasing securities in these circumstances is inherently speculative and is a wholly unsuitable investment practice for credit unions and other financial institutions.

F. Short Sales

A short sale is the sale of a security that is not owned. The purpose of a short sale generally is to speculate on the fall in the price of the security. Short sales are speculative transactions that should be conducted in a trading account, and when conducted in the investment portfolio, they are considered to be unsuitable.

Short sales are not permissible activities for Federal credit unions.

II. Stripped Mortgage-Backed Securities, Residuals and Zero Coupon Bonds

There are advantages and disadvantages in owning these products. A financial institution must consider the liquidity, marketability, pledgeability, and price volatility of each of these products prior to investing in them. It may be unsuitable for a financial institution to commit significant amounts of funds to long-term stripped mortgage-backed securities, residuals and zero coupon bonds which fluctuate greatly in price.

A. Stripped Mortgage-Backed Securities (SMBS's) consist of two classes of securities with each class receiving a different portion of the monthly interest and principal cash flows from the underlying mortgage-backed securities. In its purest form, an SMBS is converted into an interest-only (IO) strip, where the investor receives 100% of the interest cash flows, and a principal-only (PO) strip, where the investor receives 100% of the principal cash flows.

All IO's and PO's have highly volatile price characteristics based, in part, on the payment of the underlying mortgages and consequently on the maturity of the stripped security. Generally, PO's will increase in value when interest rates decline while IO's increase in value when interest rates rise. Accordingly, the purchase of an IO strip may serve, theoretically, to offset the interest rate risk associated with mortgages and similar instruments held by a financial institution. Similarly, a PO may be useful as an offset to the effect of interest rate movements on the value of mortgage servicing. However, when purchasing an IO or PO the investor is speculating on the movements of future interest rates and how these movements will affect the payment of the underlying collateral. Furthermore, those SMBS's that do not have the guarantee of a government agency or a government-sponsored agency as to the payment of principal and interest have an added element of credit risk.

As a general rule, SMBS's cannot be considered as suitable investments for the vast majority of financial institutions. SMBS's, however, may be appropriate holdings for institutions that have highly sophisticated and well managed securities portfolios, mortgage portfolios or mortgage banking functions. In such institutions, however, the acquisition of SMBS's should be undertaken only in conformance with carefully developed and documented plans prescribing specific positioning limits and control arrangements for enforcing these limits. These plans should be approved by the institutions' boards of directors and vigorously enforced.

In those financial institutions that prepare their published financial statements in accordance with Generally Accepted Accounting Principles, SMBS holdings must be accounted for in accordance with Financial Accounting Standards Board Statement #91 (FAS #91) which requires that the carrying amount be adjusted when actual prepayment experience differs from prepayment estimates. Other institutions may account for their SMBS holdings under FAS #91 or, alternatively, at market value or the lower of cost or market value.

Several states have adopted, or are considering, regulations that prohibit state-chartered banks from purchasing IO strips. Accordingly, state-chartered institutions should consult with their state regulator concerning the permissibility of purchasing SMBS's.

B. Asset-Backed Securities (ABS) Residuals

Residuals are the excess cash flows from an ABS transaction after the payments due to the bondholders and the trust administrative expenses have been satisfied. This cash flow is extremely sensitive to prepayments, and thus has a high degree of interest rate risk.

Generally, the value of residual interests in ABS's rises when interest

rates rise. Theoretically, a residual can be used as a risk management tool to offset declines in the value of fixed-rate mortgage or ABS portfolios. However, it should be understood by all residual interest purchasers that the "yield" on these instruments is inversely related to their effectiveness as a risk management vehicle. In other words, the highest yielding ABS residuals have limited risk management value usually due to a complicated ABS structure and/or unusual collateral characteristics that make modeling and understanding the economic cash flows very difficult.

Alternatively, those residuals priced for modest yields generally have positive risk management characteristics.

In conclusion, it is important to understand that a residual cash flow is highly dependent upon the prepayments received. Caution should be exercised when purchasing a residual interest, especially higher "yielding" interests, because the risk associated over the life of the ABS's may warrant an even higher return in order to adequately compensate the investor for the interest rate risk assumed. Purchases of these equity interests should be supported by in-house evaluations of possible rate of return ranges in combination with varying prepayment assumptions.

Only residual interests in ABS's rated in one of the top two rating categories are permissible acquisitions for Federal credit unions. Holding of ABS residuals should be accounted for in the manner discussed under stripped mortgage-backed securities and should be reported as "Other Assets" on regulatory reports.

C. Other Zero Coupon or Stripped Products

The interest and/or principal portions of U.S. Government obligations are sometimes sold to financial institutions in the form of stripped coupons, stripped bonds (principal), STRIPS, or propriety products, such as CAT's or TIGR's. Also, Original Issue Discount Bonds (OID's) have been issued by a number of municipal entities. Longer maturities of these instruments can exhibit extreme price volatility and, accordingly, disproportionately large long-maturity holdings (in relation to the total portfolio) of zero coupon securities may be unsuitable for investment holdings for financial institutions.

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BILLING CODE 7535-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71024-7224]

Amendments to the Commodity Control List Based on Coordinating Committee Review

AGENCY: Bureau of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of CCL entries in the categories of metal-working machinery; general industrial equipment; transportation equipment; electronics and precision instruments; metals, minerals, and their manufactures; and chemicals, metalloids, petroleum products and related materials. These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the CCL are necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective May 23, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature regarding metal-working machinery, contact Surendra Dhir, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-5695.

For questions of a technical nature regarding general industrial equipment and transportation equipment, contact Bruce Webb, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-3806.

For questions of a technical nature regarding electronics and precision instruments, contact Robert Anstead, Electronics Components Technology Center, Bureau of Export Administration, Telephone: (202) 377-1641.

For questions of a technical nature regarding metals, minerals, and their manufactures, contact Jeff Tripp, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-1309.

For questions of a technical nature regarding chemicals, metalloids, petroleum products and related materials, contact Jeff Tripp, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-1309.

For questions of a general nature, contact John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before June 6, 1988, may be exported under the general license provisions up to and including June 20, 1988. Any such items not actually exported before midnight June 20, 1988, require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), ECCN 1091A is amended by redesignating paragraph (b)(i)(1) as (b)(i)(1)(a) and by revising in the fifth sentence of that paragraph the phrase "not included from control" to read "not excluded from control" and by adding the word "*or*" at the end of the paragraph;

by adding a paragraph (b)(i)(1)(b);

by revising paragraphs (b)(i)(7)(b) and (b)(ii);

by revising in paragraph (b)(ii)(2) the phrase "the requirements of (i)(1)" to read "the requirements of (i)(1)(a)";

by adding a paragraph (b)(iii);

by revising paragraph (d);

by revising in Advisory Note 2, paragraph (c), the phrase "Maximum (Z axis)" to read "Maximum horizontal (Z axis)"; and

by revising in the Advisory Note for the People's Republic of China, paragraph (a)(6)(ii)(a), the phrase "necessary for diagnostic" to read "necessary for diagnostics", as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See § 376.11 for special information to include on the validated license application and reexport request.)

* * * * *

List of Commodities Controlled by ECCN 1091A

* * * * *

(b) * * *

(i) * * *

(1) * * *

(b) Not more than three linear axes plus one rotary axis, but no tilting axis, capable of simultaneously coordinated contouring motion, *i.e.*, the total number of linear plus rotary contouring axes cannot exceed *four*. (A secondary parallel contouring axis, e.g., W axis on horizontal boring mills, is not counted as an additional contouring axis. A secondary rotary table, the centerline of which is parallel to the primary rotary table, is also not counted as an additional contouring axis. Machines may have non-contouring parrallel or non-contouring, non-parallel rotary axes in addition to the four axes capable of simultaneously coordinated contouring motion. Machines having the capability of being simultaneously coordinated in more than *four* axes are not excluded from export control even if the numerical control unit attached to the machine limits it to three simultaneously coordinated contouring axes. For example, a machine with a control unit switchable between any three out of *five* contouring axes is not excluded from control.);

* * * * *

(7) * * * (b) ±(0.01 + (0.0025/300 x (L–300))) mm for machines with a total length of axis travel, L, greater than 300 mm and equal to or less than 3,300 mm;

* * * * *

(ii) Machine tools (other than boring mills, milling machines and machining centers described in paragraph (b)(i) of this section), having all of the following characteristics:

(1) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, etc.);

(2) Meeting the requirements of paragraphs (b)(i)(1)(a), (i)(6) and (i)(7) of this section;

(iii) Dimensional inspection machines, having all of the following characteristics:

(1) A linear positioning accuracy equal to or worse than:

(a) ± (3+L/300) micrometer for L shorter than or equal to 3,300 mm;

(b) ±14 micrometer for L longer than 3,300 mm;

(2) A rotary accuracy of equal to or worse than 5 seconds for every 90 degrees; *and*

(3) Meeting the requirements of paragraph (b)(i)(1) of this section; (For high precision turning machinery, see also ECCN 1370A.)

* * * * *

(d) Specially designed sub-assemblies and "software" that, according to the manufacturer's technical specifications, can upgrade the capabilities of numerical control units and machine tools so that they would become controlled for export by paragraphs (a), (b) or (c) of this section.

Note.—Specially designed printed circuit board sub-assemblies are controlled by this paragraph (d).

(For machine tool parts and components, see also ECCN 1093A.)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by revising the Technical Note immediately before the Advisory Note for the People's Republic of China to read as follows:

Technical Note.—For purposes of this ECCN, "stored program control" is defined as a control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions. Equipment may be "stored program controlled" whether the electronic storage is internal or external to the equipment.

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the phrase "cylindrical plasma etchers without digital control" in paragraph (b)(i)(viii) to read "cylindrical plasma etchers without stored program control";

by removing paragraph (b)(1)(xi), redesignating paragraph (b)(1)(xii) as (b)(1)(xi), and redesignating paragraph (b)(1)(xiii) as (b)(1)(xii);

by redesignating Technical Note 3, following paragraph (b)(8), as Note 1;

by redesignating Technical Note 4 as Note 2 and revising this newly redesignated Note 2;

by revising in paragraph (m) of the Advisory Note for the People's Republic of China the phrase "Photo-optical mask fabrication equipment" to read "Mask fabrication equipment using photo-optical methods"; and

by revising in paragraphs (s), (t), and (v) of the Advisory Note for the People's Republic of China the phrase "Digitally controlled" to read "Stored program controlled", as follows:

1355A Equipment for the manufacture or testing of electronic components and materials and specially designed components, accessories and "specially designed software" therefor.

* * * * *

List of Equipment Controlled by ECCN 1355A

* * * * *

(b) * * *

(8) * * *

Note.—* * *

Notes.—1. * * *

2. For the purposes of this ECCN, "stored program control" is defined as a control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions.

Note.—Equipment may be "stored program controlled" whether the electronic storage is internal or external to the equipment.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by adding a Note 3 and designating it as *Reserved* and by removing the (Advisory) Note 3 and revising the Advisory Note for the People's Republic of China to read as follows:

Advisory Note for the People's Repulic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of semi-conductor photodiodes for previously approved and installed Western civil communications equipment with a response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

Note.—The photodiodes will be supplied on a replacement basis with no enhancement of the system.

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCN 3605A is amended by revising the "List of Nickel Powder and Porous Nickel Metal Controlled By ECCN 3605A" and by revising the Advisory Note and adding other Notes, as follows:

3605A Nickel powder and porous nickel metal.

Controls for ECCN 3605A

* * * * *

List of Nickel Powder and Porous Nickel Metal Controlled by ECCN 3605A

(a) Powder with a nickel purity content of 99% or more and a mean particle size of less than 10 micrometers measured by the ASTM B 330 standard;

(b) Porous nickel metal produced from materials controlled for export by paragraph (a) of this List *except* single porous nickel metal sheets not exceeding 930 cm^2 intended for use in batteries for civil applications.

Note.—Paragraph (b) refers to porous nickel metal manufactured from nickel powder defined in paragraph (a) that has been compacted and sintered to form a metal material with fine pores interconnected throughout the structure.

Advisory Note.—Licenses are likely to be approved for export to Country Groups QWY of nickel powder in uncompacted powder form in quantities of 4,000 kg or less for non-nuclear civil applications.

Advisory Note For The People's Republic of China: Licenses are likely to be approved for export to the People's Republic of China of nickel powder obtained by the carbonyl process for non-nuclear civil applications.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1763A is amended by removing the quotation marks from the phrase "Fibrous and filamentary materials" in the heading and in paragraphs (a) and (b);

by revising paragraph (b)(2)(ii) to read "Discontinuous multiphase polycrystalline alumina fibers in chopped fiber or random mat form, containing 3% by weight or more silica, having a "specific modulus" less than 10×10^6 m (3.92×10^8 inches);" and

by revising in paragraph (d) of Technical Note 1 the word "blanket" to read "blankets".

Dated: May 17, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-11369 Filed 5-20-88; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3226]

Medical Staff of Doctors' Hospital of Prince Georges County; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the medical staff of a hospital in Prince Georges County, Maryland from engaging in concerted, coercive conduct to prevent or impede a health maintenance organization or others from offering health care services.

DATE: Complaint and Order issued April 14, 1988 [1].

FOR FURTHER INFORMATION CONTACT: Jane R. Seymour, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: On Thursday, January 28, 1988, there was published in the **Federal Register** 53 FR 2506, a proposed consent agreement with analysis In the Matter of Medical Staff of Doctors' Hospital of Prince Georges County, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under CFR Part 13, are as follows: Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.405 To discriminate unfairly or restrictively in general; § 13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general, § 13.533-50 Maintain means of communication;

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

§ 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Dealing On Exclusive And Tying Basis: § 13.670 Dealing on exclusive and tying basis; § 13.670–20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Doctors, Medical staffs, Medical facilities, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88–11439 Filed 5–20–88; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. 9154]

Volkswagen of America, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Troy, Mich. automobile company to offer an arbitration program to owners of certain Volkswagen and Audi automobiles with faulty valve seals and other oil consumption-related problems.

DATE: Complaint issued April 1, 1981. Order issued April 13, 1988 [1].

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, FTC/H–238A, Washington, DC 20580. (202) 326–3114.

SUPPLEMENTARY INFORMATION: On Friday, April 17, 1987, there was published in the **Federal Register**, 52 FR 12546, (*corrections*, 52 FR 17960 and 52 FR 20096) a proposed consent agreement with analysis In the Matter of Volkswagen of America, Inc., and Volkswagen AG, corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered a modified order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–5 Arbitration; § 13.533–20 Disclosures; § 13.533–25 Displays, in-house; § 13.533–40 Furnishing information to media; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Neglecting, Unfairly Or Deceptively, To Make Material Disclosure: § 13.1845 Composition; § 13.1845–15 Federal Trade Commission Act; § 13.1875 Non-standard character; § 13.1886 Quality, grade or type.

List of Subjects in 16 CFR Part 13

Arbitration, Automobiles, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88–11438 Filed 5–20–88; 8:45 am]

BILLING CODE 6750–01–M

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center For Drug Evaluation and Research

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to submission of and effective approval dates for abbreviated new drug applications and certain new drug applications. The amendment changes the title of officials who are delegated this authority to conform with the new organizational title, Center for Drug Evaluation and Research (CDER). The amendment also delegates an additional authority for 180-day exclusivity determinations.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The Center for Drugs and Biologics was reorganized to create two new centers: The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research CBER). FDA is amending § 5.93 *Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications* (21 CFR 5.93) by changing the titles of the officials listed in the delegation to conform with the new organizational title, CDER. In addition, FDA is delegating an additional authority under section 505(j)(4)(B)(iv) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(4)(B)(iv)) to authorize the Director and Deputy Director, CDER, and the Director and Deputy Director, Office of Drug Standards, CDER, to make 180-day exclusivity determinations.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300w *et seq.*, 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Section 5.93 is revised to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to decisions made under section 505(c)(3)(D), (j)(4)(B)(iv), and (j)(4)(D) of the Federal Food, Drug and Cosmetic

Act (the act) concerning the date of submission or the date or effective approval of abbreviated new drug applications including supplements thereto submitted under section 505(j) of the act and of new drug applications including supplements thereto submitted under section 505(b)(1) of the act and described under section 505(b)(2) of the act:

(a) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Office of Drug Standards, CDER.

Dated: May 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-11494 Filed 5-20-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 1 and 140

[FHWA Docket No. 86-18, Notice No. 2]

Reimbursement for Railroad Work

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on reimbursement for railroad work to allow, at the option of a State highway agency, Federal-aid highway funds to be used to pay for certain overhead and indirect construction costs incurred by railroads performing work on Federal-aid highway projects.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering (202) 366-4652; or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA's current regulation dealing with reimbursement for railroad work performed on Federal-aid highway projects is contained in 23 CFR Part 140, Subpart I. However, 23 CFR 1.11(a) prohibits Federal reimbursement for certain overhead costs incurred by railroad companies when performing engineering services. The Association of American Railroads requested that the FHWA reconsider its policy relating to these overhead costs. The FHWA agreed to review the issue.

In a notice of proposed rulemaking (NPRM), FHWA Docket 86-18 (51 FR 44996, December 16, 1986), the FHWA proposed to amend its regulation to allow Federal funds to participate in a railroad's overhead and indirect construction costs not charged directly to a construction activity, provided these costs are allocated to the construction activity on an equitable basis. This change was proposed so that the railroad companies may be more fully compensated for the costs they incur in performing construction work with their own labor forces on Federal-aid highway projects.

There were 18 commenters on the NPRM. Comments were received from 12 State highway agencies, a State Department of Transportation, a transit authority, a public utility commission, a railroad company, the Association of American Railroads, and the American Association of State Highway and Transportation Officials' (AASHTO) Administrative Subcommittee on Internal and External Audit. There was also a request for a time extension on the comment period. Twelve out of the 18 commenters opposed the proposal to expand eligibility to include further overhead costs. Of these 12 commenters, nine were State highway agencies, one State Department of Transportation, one a public utility commission and one the AASHTO Subcommittee on Audits. The other six commenters expressed general support for the proposal or offered some technical advice.

Several respondents supported their opposition by relating that use of Federal funds to reimburse the railroads for a broader range of overhead costs could result in a decrease in funding ability for improving railroad-highway crossings. Assuming a fixed level of funding for the railroad-highway grade crossing safety program, their analyses indicated that reimbursing railroads for the added overhead expenses could effectively reduce by 5 to 10 percent the funding being applied to construction of crossing improvements. This would then likely lead to a commensurate reduction in the number of railroad-highway crossings improved.

Another reason given for opposing the expansion of eligibility to include further overhead costs was that the determination of eligible costs may prove to be difficult. Several cited recent experiences with difficulties in determining appropriate railroad equipment rates as examples of the difficulties in auditing railroad cost records.

Upon further review the FHWA has decided to allow Federal-aid highway funds to be used to reimburse the railroads for additional overhead and indirect construction costs outlined in the NPRM. The primary reason for this decision is a desire that the Federal regulation not be viewed as a barrier or an impediment to use of Federal funds for this purpose and to provide the States the flexibility to make their own decisions. As a result, the final rule being adopted does not mandate to the States that Federal funds must be used to pay for these additional railroad overhead expenses. Rather, this decision is left to the individual States. The States may establish payment standards more restrictive than those permitted or required by this regulation. For example, if a State is concerned that payment of these additional railroad overhead expenses will adversely affect its railroad-highway grade crossing improvement program, then it could choose not to pay for these expenses. Also, any Federal-aid funding reimbursement for these overhead expenses is always dependent on a State's determination of the acceptability of a railroad's cost accounting records. Costs for which records are not readily available for audit would not be eligible for Federal-aid reimbursement. The State has the authority to decide on the availability and acceptability of a railroad's records.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of this revision will be minimal. Although railroad companies may, at a State's option, be reimbursed for additional types of overhead or indirect expenses, the economic impact on the overall highway program is negligible. Accordingly, a full regulatory evaluation is not required. For these reasons and under the criteria of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), the FHWA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule is consistent with those principles. This action will provide to a State the flexibility to use its Federal-aid highway funds to reimburse a railroad

for additional overhead expenses incurred should a State choose to do so.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

List of Subjects in 23 CFR Part 140

Grant programs—Transportation, Highways and roads, Railroads.

In consideration of the foregoing, Part 1 and Part 140, Subpart I to Chapter 1 of Title 23, Code of Federal Regulations, are amended as set forth below.

Issued on May 16, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA hereby amends 23 CFR Parts 1 and 140, Subpart I as follows:

PART 1—GENERAL

1. The authority citation for Part 1 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 1.48(b).

§ 1.11 [Amended]

2. In § 1.11, paragraph (a) is amended by removing the words "paragraphs (b) and (c)" and inserting in lieu thereof the words "paragraph (b)" each place they appear in the text.

PART 140—REIMBURSEMENT

Subpart I—Reimbursement for Railroad Work

3. The authority citation for Part 140, Subpart I continues to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 1.48.

4. In § 140.904, paragraph (a) is revised to read as follows:

§ 140.904 Reimbursement basis.

(a) *General.* On projects involving the elimination of hazards of railroad-highway crossings, and on other projects where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred by the State in making changes to railroad facilities as required in connection with a Federal-aid highway project, in accordance with the provisions of this subpart.

* * * * *

5. Part 140, Subpart I is amended by adding § 140.907 to read as follows:

§ 140.907 Overhead and indirect construction costs.

(a) A State may elect to reimburse the railroad company for its overhead and indirect construction costs.

(b) The FHWA will participate in these costs provided that:

(1) The costs are distributed to all applicable work orders and other functions on an equitable and uniform basis in accordance with generally accepted accounting principles,

(2) The costs included in the distribution are limited to costs actually incurred by the railroad,

(3) The costs are eligible in accordance with the Federal Acquisition Regulation (48 CFR), Part 31, Contract Cost Principles and Procedures, relating to contracts with commercial organizations,

(4) The costs are considered reasonable,

(5) Records are readily available at a single location which adequately support the costs included in the distribution, the method used for distributing the costs, and the basis for determining additive rates,

(6) The rates are adjusted at least annually taking into consideration any overrecovery or underrecovery of costs, and

(7) The railroad maintains written procedures which assure proper control and distribution of the overhead and indirect construction costs.

[FR Doc. 88-11425 Filed 5-20-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8204]

Income Taxes; Safe-haven Interest Rates and Rental Charges for Commonly Controlled Taxpayers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of safe-haven interest rates for certain loans and advances between commonly controlled taxpayers and the deletion of a safe-haven rental charge for the leasing of certain tangible property between controlled taxpayers. These regulations provide for floating safe-haven interest rates under section 482 and are intended to make the safe-haven rates consistent with the interest rates applicable under sections 483 and 1274, as directed by Congress in the Tax Reform Act of 1984. These regulations also make changes to the allowable interest-free period for certain intercompany trade receivables. These regulations affect all controlled taxpayers and provide them with guidance on the use of safe-haven interest rates and lease rates under section 482.

EFFECTIVE DATES: The amendments to the safe-haven interest rates and the safe-haven lease rules are generally effective for loans or advances and for leases entered into after May 8, 1986. The amendments to the interest-free period for intercompany trade receivables (the six-month rule) are effective for amounts arising after June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph M. Rosenthal of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-748-86), or phone (202) 566-3872, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 482 of the Internal Revenue Code were published in the **Federal Register** on April 8, 1986 (51 FR 12022, 12035). The change from fixed to floating safe-haven interest rates under section 482 was proposed to make the safe-haven rates consistent with the interest rates applicable under sections 483 and 1274, as directed by Congress in the Tax Reform Act of 1984 (98 Stat. 494, 531). The proposed amendments would also make other changes to the section 482 regulations, including changing the interest-free period for certain intercompany trade receivables. Many written comments responding to the proposed regulations were received. A public hearing on the proposed regulations was held on November 17, 1986. The final regulations published in this document are adopted after considering all the comments received on the proposed regulations.

Explanation of the Final Regulations

Safe-Haven Interest Rates

Section 1.482-2(a)(2)(iii) of the final regulations adopts the safe-haven interest rates contained in the proposed regulations without change. The range of safe-haven interest rates generally applicable under the final regulations are from 100 to 130 percent of the

applicable Federal rate (AFR) as determined under section 1274(d) in effect on the date a loan between controlled entities is made, effective generally for loans made after May 8, 1986. Comments received on the proposed regulations were generally in favor of using the AFR mechanism to provide floating safe-haven interest rates under section 482, and commentators also favored the proposed range of safe-haven interest rates of from 100 to 130 percent of the AFR.

Interest-Free Period on Intercompany Transactions

The Prior Regulations

Section 1.482–2(a)(3) of the prior regulations provided that interest shall be charged on an indebtedness between controlled entities beginning on the day the indebtedness arises. An exception was provided in the prior regulations for indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group and not evidenced by a written instrument requiring the payment of interest (hereinafter referred to as "intercompany trade receivables"). Under this exception, interest need not be charged on intercompany trade receivables until six months after the debt arises (the "six month rule"), or until a later date if the taxpayer shows that the regular trade practice conducted by either it or others in its industry permits comparable balances with unrelated parties to remain outstanding for more than six months without charging interest (the "trade practice exception"). The period for which interest need not be charged on intercompany trade receivables is generally referred to as the "interest-free period".

The Proposed Regulations and Comments

Under § 1.482–2(a)(1)(iii) of the proposed regulations the six month interest-free period would be reduced to 60-days (the "60-day rule"), but the proposed regulations would also retain the trade practice exception. The definition of intercompany trade receivables is unchanged in the proposed regulations. The prior and the proposed regulations do not distinguish between intercompany trade receivables incurred in a trade or business conducted by the debtor member within the United States, and intercompany trade receivables incurred in a trade or business carried on by the debtor member outside the United States.

Most of the comments received on the proposed regulations addressed the proposed 60-day rule. Commentators stated that a 60-day rule would be commercially unreasonable, burdensome, and inconsistent with the implicit six month interest-free period built into sections 483 and 1274. Commentators also stated that a 60-day rule could require extensive tracing to determine that timely payment has been made. Comments critical of the 60-day rule were most often raised in the context of international intercompany transactions where there may be difficulties in arranging and transmitting payments that are not present in domestic transactions (for example, assembling documents necessary for customs clearing requirements and banking requirements for the purchase of foreign exchange). Commentators also argued that audit adjustments under section 482 requiring the accrual of interest would be more numerous and difficult to perform under a 60-day rule.

The Final Regulations

The final regulations published in this document provide for a basic interest-free period and for several exceptions to the basic interest-free period for certain classes of intercompany trade receivables. The portions of the final regulations relating to the interest-free period for intercompany trade receivables are effective for intercompany trade receivables arising after June 30, 1988.

Section 1.482–2(a)(1)(iii)(B) of the final regulations provides that interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month following the month in which the intercompany trade receivable arises. Under § 1.482–2(a)(1)(iii)(C) of the final regulations, in the case of intercompany trade receivables incurred by the debtor member of the group in transactions in the ordinary course of a trade or business which is actively conducted by the debtor member outside the United States, interest is not required to be charged on such intercompany trade receivables before the first day of the fourth calendar month following the month in which the intercompany trade receivable arises. Under either of these provisions, the trade practice exception provided in § 1.482–2(a)(1)(iii)(D) of the final regulations may be used to lengthen the interest-free period. For purposes of determining the interest-free period, the term "United States" includes any possession of the United States, and the term "foreign country" excludes any possession of the United States.

Under the above rules of the final regulations, the interest-free period on intercompany trade receivables will not be shorter than two full calendar months in the case of domestic intercompany trade receivables; or shorter than three full calendar months in the case of intercompany trade receivables incurred by the debtor member in a foreign business. If the trade practice exception is not used, the interest-free period will end on the last day of a calendar month. In the case of intercompany trade receivables incurred by the debtor member in a foreign business, the interest-free period will always include the end of a fiscal quarter. These rules are intended to simplify administration of a shorter interest-free period: one month's intercompany trade receivables may be treated as a single group having the same interest-free period, thereby limiting the number of intercompany trade receivables that must be tracked for compliance with the interest-free period rules.

Under § 1.482–2(a)(1)(iii)(E) of the final regulations an additional exception for determining a longer interest-free period is provided for intercompany trade receivables attributable to related party purchases of property for resale to unrelated persons located in a foreign country. This longer interest-free period is equal to ten (10) calendar days plus the purchasing member's average collection period for sales to unrelated persons located in the same foreign country of products within the same product group that includes the property purchased from the related party. The interest-free period under this exception, however, may not exceed 183 days. This interest-free period is intended to approximate the collection period that the related party seller might have experienced if it made the sale itself.

For purposes of this exception a product group is based upon a three-digit grouping of the Standard Industrial Classification Code (three-digit SIC code). Rules for determining the average collection period are provided in § 1.482–2(a)(1)(iii)(E)(*2*) of the final regulations. If the related party purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of its average collection period, by product group within each country, are required. The interest-free period under this exception is not available if the property sold to the unrelated party has been manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by the related party purchaser.

Safe-Haven Lease Rates

The proposed regulations would delete the formula method for determining a safe-haven rental charge for leases of tangible depreciable property between controlled entities. The safe-haven rule for subleases would be retained. No comments were received on these portions of the proposed regulations and they are adopted without change.

Special Analyses

It has been determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, it has been concluded that these regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Joseph M. Rosenthal of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department, however, participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441–1 to 1.483–2

Income taxes, Accounting, Deferred compensation plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Section 1.482–2 also issued under 26 U.S.C. 482.

Par. 2. Paragraphs (a) and (c)(2) of § 1.482–2 are revised to read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

(a) *Loans or advances*—(1) *Interest on bona fide indebtedness*—(i) *In general.* Where one member of a group of controlled entities makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group and either charges no interest, or charges interest at a rate which is not equal to an arm's length rate of interest (as defined in paragraph (a)(2) of this section) with respect to such loan or advance, the district directory may make appropriate allocations to reflect an arm's length rate of interest for the use of such loan or advance.

(ii) *Application of paragraph (a) of this section*—(A) *Interest on bona fide indebtedness.* Paragraph (a) of this section applies only to determine the appropriateness of the rate of interest charged on the principal amount of a bona fide indebtedness between members of a group of controlled entities, including—

(1) Loans or advances of money or other consideration (whether or not evidenced by a written instrument), and

(2) Indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group, or any other similar extension of credit.

(B) *Alleged indebtedness.* This paragraph (a) does not apply to so much of an alleged indebtedness which is not in fact a bona fide indebtedness, even if the stated rate of interest thereon would be within the safe haven rates prescribed in paragraph (a)(2)(iii) of this section. For example, paragraph (a) of this section does not apply to payments with respect to all or a portion of such alleged indebtedness where in fact all or a portion of an alleged indebtedness is a contribution to the capital of a corporation or a distribution by a corporation with respect to its shares. Similarly, this paragragh (a) does not apply to payments with respect to an alleged purchase-money debt instrument given in consideration for an alleged sale of property between two controlled entities where in fact the transaction constitutes a lease of the property. Payments made with respect to alleged indebtedness (including alleged stated interest thereon) shall be treated according to their substance. See § 1.482–2(a)(3)(i).

(iii) *Period for which interest shall be charged*—(A) *General rule.* This paragraph (a)(1)(iii) is effective for indebtedness arising after June 30, 1988. See 26 CFR 1.482–2(a)(3) (revised as of April 1, 1988) for indebtedness arising before July 1, 1988. Except as otherwise provided in paragraphs (a)(1)(iii)(B) through (E) of this section, the period for which interest shall be charged with respect to a bona fide indebtedness between controlled entities begins on the day after the day the indebtedness arises and ends on the day the indebtedness is satisfied (whether by payment, offset, cancellation, or otherwise.) Paragraphs (a)(2)(iii)(B) through (E) of this section provide certain alternative periods during which interest is not required to be charged on certain indebtedness. These exceptions apply only to indebtedness described in paragraph (a)(1)(ii)(A)*(2)* of this section (relating to indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group) and not evidenced by a written instrument requiring the payment of interest. Such amounts are hereinafter referred to as "intercompany trade receivables". The period for which interest is not required to be changed on intercompany trade receivables under this paragraph (a)(1)(iii) is called the "interest-free period". In general, an intercompany trade receivable arises at the time economic performance occurs (within the meaning of section 461(h) and the regulations thereunder) with respect to the underlying transaction between controlled entities. For purpose of this paragraph (a)(1)(iii), the term "United States" includes any possession of the United States, and the term "foreign country" excludes any possession of the United States.

(B) *Exception for certain intercompany transactions in the ordinary course of business.* Interest is not required to be charged on an intercompany trade receivable until the first day of the third calendar month following the month in which the intercompany trade receivable arises.

(C) *Exception for trade or business of debtor member located outside the United States.* In the case of an intercompany trade receivable arising from a transaction in the ordinary course of a trade or business which is actively conducted outside the United States by the debtor member, interest is not required to be charged until the first day of the fourth calendar month following the month in which such intercompany trade receivable arises.

(D) *Exception for regular trade practice of creditor member or others in creditor's industry.* If the creditor member or unrelated persons in the creditor member's industry, as a regular trade practice, allow unrelated parties a longer period without charging interest than that described in paragraph (a)(1)(iii) (B) or (C) of this section (whichever is applicable) with respect to transactions which are similar to transactions that give rise to intercompany trade receivables, such longer interest-free period shall be allowed with respect a comparable amount of intercompany trade receivables.

(E) *Exception for property purchased for resale in a foreign country—(1) General rule.* If in the ordinary course of business one member of the group (the "related purchaser") purchases property from another member of the group (the "related seller") for resale to unrelated persons located in a particular foreign country, the related purchaser and the related seller may use as the interest-free period for the intercompany trade receivables arising during the related seller's taxable year from the purchase of such property within the same product group an interest-free period equal the sum of—

(*i*) The number of days in the related purchaser's average collection period (as determined under paragraph (a)(1)(iii)(E)(*2*) of this section) for sales of property within the same product group sold in the ordinary course of business to unrelated persons located in the same foreign country, plus

(*ii*) Ten (10) calendar days.

The interest-free period under this paragraph (a)(1)(iii)(E), however, shall in no event exceed 183 days. The related purchaser does not have to conduct business outside the United States in order to be eligible to use the interest-free period of this paragraph (a)(1)(iii)(E). The interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to intercompany trade receivables attributable to property which is manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by the related purchaser. For purposes of this paragraph (a)(1)(iii)(E) a product group includes all products within the same three-digit Standard Industrial Classification (SIC) Code (as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President).

(*2*) *Average collection period.* An average collection period for purposes of this paragraph (a)(1)(iii)(E) is determined as follows:

(*i*) *Step 1.* Determine total sales (less returns and allowances) by the related purchaser in the product group to unrelated persons located in the same foreign country during the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*ii*) *Step 2.* Determine the related purchaser's average month-end accounts receivable balance with respect to sales described in paragraph (a)(1)(iii)(E)(*2*)(*i*) for the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*iii*) *Step 3.* Compute a receivables turnover rate by dividing the total sales amount described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section by the average receivables balance described in paragraph (a)(1)(iii)(E)(*2*)(*ii*) of this section.

(*iv*) *Step 4.* Divide the receivables turnover rate determined under (a)(1)(iii)(E)(*2*)(*iii*) of this section into 365, and round the result to the nearest whole number to determine the number of days in the average collection period.

If the related purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of an average collection period, by product group within each country, are required. If the related purchaser resells fungible property in more than one foreign country and the intercompany trade receivables arising from the related party purchase of such fungible property cannot reasonably be identified with resales in particular foreign countries, then solely for the purpose of assigning an interest-free period to such intercompany trade receivables under this paragraph (a)(1)(iii)(E), an amount of each such intercompany trade receivable shall be treated as allocable to a particular foreign country in the same proportion that the related purchaser's sales of such fungible property in such foreign country during the period described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section bears to the related purchaser's sales of all such fungible property in all such foreign countries during such period. An interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to any intercompany trade receivables arising in a taxable year of the related seller if the related purchaser made no sales described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section from which the appropriate interest-free period may be determined.

(*3*) *Illustration.* The interest-free period provided under paragraph (a)(1)(iii)(E) of this section may be illustrated by the following example:

Example—(i) *Facts.* X and Y use the calendar year as the taxable year and are members of the same group of controlled entities within the meaning of section 482. For Y's 1988 calendar taxable year X and Y intend to use the interest-free period determined under this paragraph (a)(1)(iii)(E) for intercompany trade receivables attributable to X's purchases of certain products from Y for resale by X in the ordinary course of business to unrelated persons in country Z. For its 1987 calendar taxable year all of X's sales in country Z were of products within a single product group based upon a three-digit SIC code, were not manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by X, and were sold in the ordinary course of jX's trade or business to unrelated persons located only in country Z. These sales and the month-end accounts receivable balances (for such sales and for such sales uncollected from prior months) are as follows:

Month (1987)	Sales	Accounts receivable
January	$500,000	$2,835,850
February	600,000	2,840,300
March	450,000	2,850,670
April	550,000	2,825,700
May	650,000	2,809,360
June	525,000	2,803,200
July	400,000	2,825,850
August	425,000	2,796,240
September	475,000	2,839,390
October	525,000	2,650,550
November	450,000	2,775,450
December	650,000	2,812,600
Totals	6,200,000	33,665,160

(ii) *Average collection period.* X's total sales within the same product group to unrelated persons within country Z for the period are $6,200,000. The average receivables balance for the period is $2,805,430 ($33,665,160/12). The average collection period in whole days is determined as follows:

$$\text{Receivables turnover rate} = \frac{\$6,200,000}{\$2,805,430} = 2.21$$

$$\text{Average collection period} = \frac{365}{2.21} = 165.16 \text{ days,}$$

rounded to the nearest whole day=165 days.

(iii) *Interest-free period.* Accordingly, for intercompany trade receivables incurred by X during Y's 1988 calendar taxable year attributable to the purchase of property from Y for resale to unrelated persons located in country Z and included in the product group, X may use an interest-free period of 175 days (165 days in the average collection period plus 10 days, but not in excess of a maximum of 183 days). All other intercompany trade receivables incurred by X are subject to the interest-free periods described in paragraphs (a)(1)(iii) (B), (C), or (D), whichever are applicable. If X makes sales in other foreign countries in addition to country Z or makes sales of property in more than one product group in any foreign country, separate computations of X's average collection period, by product group within each country, are required in order for X and Y to determine an interest-free period for such product groups in such foreign countries under this paragraph (a)(1)(iii)(E).

(iv) *Payment; book entries.* (A) Except as otherwise provided in this paragraph (a)(1)(iv), in determining the period of time for which an amount owed by one member of the group to another member is outstanding, payments or other credits to an account are considered to be applied against the earliest amount outstanding, that is, payments or credits are applied against amounts in a first-in, first-out (FIFO) order. Thus, tracing payments to individual intercompany trade receivables is generally not required in order to determine whether a particular intercompany trade receivable has been paid within the applicable interest-free period determined under paragraph (a)(1)(iii) of this section. The application of this paragraph (a)(1)(iv)(A) may be illustrated by the following example:

Example—(*i*) *Facts.* X and Y are members of a group of controlled entities within the meaning of section 482. Assume that the balance of intercompany trade receivables owed by X to Y on June 1 is $100, and that all of the $100 balance represents amounts incurred by X to Y during the month of May. During the month of June X incurs an additional $200 of intercompany trade receivables to Y. Assume that on July 15, $60 is properly credited against X's intercompany account to Y, and that $240 is properly credited against the intercompany account on August 31. Assume that under paragraph (a)(1)(iii)(B) of this section interest must be charged on X's intercompany trade receivables to Y beginning with the first day of the third calendar month following the month the intercompany trade receivables arise, and that no alternative interest-free period applies. Thus, the interest-free period for intercompany trade receivables incurred during the month of May ends on July 31, and the interest-free period for intercompany trade receivables incurred during the month of June ends on August 31.

(*ii*) *Application of payments.* Using a FIFO payment order, the aggregate payments of $300 are applied first to the opening June balance, and then to the additional amounts incurred during the month of June. With respect to X's June opening balance of $100, no interest is required to be accrued on $60 of such balance paid by X on July 15, because such portion was paid within its interest-free period. Interest for 31 days, from August 1 to August 31 inclusive, is required to be accrued on the $40 portion of the opening balance not paid until August 31. No interest is required to be accrued on the $200 of intercompany trade receivables X incurred to Y during June because the $240 credited on August 31, after eliminating the $40 of indebtedness remaining from periods before June, also eliminated the $20 incurred by X during June prior to the end of the interest-free period for that amount. The amount of interest incurred by X to Y on the $40 amount during August creates bona fide indebtedness between controlled entities and is subject to the provisions of paragraph (a)(1)(iii)(A) of this section without regard to any of the exceptions contained in paragraphs (a)(1)(iii) (B) through (E) of this section.

(B) Notwithstanding the first-in, first-out payment application rule described in paragraph (a)(1)(iv)(A) of this section, the taxpayer may apply payments or credits against amounts owed in some other order on its books in accordance with an agreement or understanding of the related parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate*—(i) *In general.* For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower.* Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986*—(A) *Applicability*—(*1*) *General rule.* Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) of this section applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(*i*) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*)) of this section the loan or advance is entered into after May 8, 1986, and

(*ii*) After May 8, 1986, under a demand loan or advance between such controlled entities.

(*2*) *Grandfather rule for existing loans.* The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in 26 CFR § 1.482–2(a)(2)(iii) (revised as of April 1, 1985) shall apply to—

(i) Term loans or advances made before May 9, 1986, and

(ii) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of Chapter 1 of the Code—

(*1*) The rate of interest actually charged if that rate is—

(i) Not less than 100 percent of the applicable Federal rate (the "lower limit"), and

(ii) Not greater than 130 percent of the applicable Federal rate (the "upper limit"), or

(*2*) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually, or

(*3*) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually,

unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i) of this section. In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term "applicable Federal rate" means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate.

(2) Over 3 years but not over 9 years, the Federal mid-term rate, or

(3) Over 9 years, the Federal long-term rate,

as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (the "lowest 3-month rate", as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the "applicable Federal rate" means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short-term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business or making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of the Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Code section. After the enactment of the Tax Reform Act of 1984, Pub. L. 98–369, and the enactment of Pub. L. 99–121, such other Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows:

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Code section.

(ii) Second, the other Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Code section.

(iii) Third, whether or not the other Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (e) of this section, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of paragraph (e) of this section, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples.* The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example (1). An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482–2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example (2). B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a term loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and the loan is treated as having original issue discount equal to such amount. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100–130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example (3). The facts are the same as in example (2) except that the amount lent by Z to B is 9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 *de minimis* exception of section 7872(c)(3), no adjustment for interest will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

Example (4). X and Y are commonly controlled taxpayers. At a time when the applicable Federal rate is 12 percent, compounded semiannually, X sells property to Y in exchange for a note with a stated rate of interest of 18 percent, compounded semiannually. Assume that the other applicable Code section to the transaction is section 483. Section 483 does not apply to this transaction because, under section 483(d), there is not total unstated interest under the contract using the test rate of interest equal to 100 percent of the applicable Federal rate. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may be applied by the district director to determine whether the rate of interest under the note is excessive, that is, to determine whether the 18 percent stated interest rate under the note exceeds an arm's length rate of interest.

Example (5). Assume that A and B are commonly controlled taxpayers and that the applicable Federal rate is 10 percent, compounded semiannually. On June 30, 1986, A sells property to B and receives in exchange B's purchase-money note in the amount of $2,000,000. The stated interest rate on the note is 9%, compounded semiannually, and the stated redemption price at maturity on the note is $2,000,000. Assume that the other applicable Code section to this transaction is section 1274. As provided in section 1274A(a) and (b), the discount rate for purposes of section 1274 will be nine percent, compounded semiannually, because the stated principal amount of B's note does not exceed $2,800,000. Section 1274 does not apply to this transaction because there is adequate stated interest on the debt instrument using a discount rate equal to 9%, compounded semiannually, and the stated redemption price at maturity does not exceed the stated principal amount. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $2,000,000 note to determine whether the 9% rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

* * * * *

(c) *Use of tangible property* * * *

(2) *Arm's length charge*—(i) *In general.* For purposes of paragraph (c) of this section, an arm's length rental charge shall be the amount of rent which was charged, or would have been charged for the use of the same or similar property, during the time it was in use, in independent transactions with or between unrelated parties under similar circumstances considering the period and location of the use, the owner's investment in the property or rent paid for the property, expenses of maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge.* See 26 CFR 1.482–2(c)(2)(ii) (revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1986, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases.* (A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section, or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

* * * * *

Par. 3. Paragraph (b)(12) of § 1.7872–5T is revised to read as follows:

§ 1.7872–5T. Exempted loans.

* * * * *

(b) *List of exemptions.* * * *

(12) Indebtedness subject to section 482, but such indebtedness is exempt from the application of section 7872 only during the interest-free period, if any, determined under § 1.482–2(a)(1)(iii) with respect to intercompany trade receivables described in § 1.482–2(a)(1)(ii)(A)(*ii*). See also § 1.482–2(a)(3);

* * * * *

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: May 4, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–11393 Filed 5–20–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6676

[AK–932–08–4220–10; AA–50224]

Withdrawal of Public Land for the Cape Fanshaw Natural Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 600 acres of National Forest System lands from surface entry and mining for a period of 20 years to protect the Cape Fanshaw Natural Area. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a United States Forest Service Natural Area:

Copper River Meridian (Unsurveyed)

T. 54 S., R. 75 E.,

Corner #1, the true point of beginning, is a 2,238-foot peak located in the E½NE¼ SE¼NW¼, W½NW¼SW¼NE¼, protracted Section 10, T. 54 S., R. 75 E., Copper River Meridian, Alaska, as shown on the Sumdum A–5 USGS Quad map (1948).

From corner #1 proceed North approximately 32 chains to corner #2 which is located on the left bank of an unnamed intermittent stream; from corner #2 proceed northwesterly meandering the thread of that stream to corner #3 which is a point on the left bank of that stream, located approximately 16 chains from its outlet into South Passage; from corner #3 proceed South 42 chains to corner #4; thence S. 58° W. approximately 76 chains to corner #5, a point at the toe of a ridge located northerly of an unnamed intermittent stream; thence easterly and northeasterly approximately 140 chains following the ascending ridge of the 2238-foot peak to corner #1 and the point of beginning.

The area described contains approximately 600 acres near Cape Fanshaw, Alaska.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary

determines that the withdrawal shall be extended.

May 13, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-11490 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6677

[AK-932-08-4220-10; F-22389]

Withdrawal of Public Land for the Beaver Creek Radio Relay Site; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2.5 acres of public lands from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, for a period of 20 years to protect the U.S. Air Force Beaver Creek Radio Relay Site.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2) and from leasing under the mineral leasing laws, to protect a United States Air Force radio relay site:

Copper River Meridian

A parcel of land located within Sections 27 and 28, T. 15 N., R. 19 E.; said parcel being more particularly described as follows:
Commencing at the point of intersection of Latitude 63°03'32.43" North and Longitude 141°49'35.59" West (1927 NAD), which point is monumented by Corps of Engineers Brass Cap TD-2 Test Tower and located North 3°18'19" West, a distance of 3,812.00 feet, more or less, of Station 2478+93.3 (Mile 1267.1) of the Alaska Highway;
Thence North 71°40'25" East, a distance of 226.73 feet to the east boundary of said parcel and *The True Point of Beginning;*
Thence South, a distance of 165.00 feet;
Thence West, a distance of 330.00 feet;
Thence North, a distance of 330.00 feet;
Thence East, a distance of 330.00 feet;
Thence South, a distance of 165.00 feet closing on the True Point of Beginning.

This area described contains 2.5 acres, more or less.

2. This withdrawal will not affect or alter any existing leases relating to existing land use.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

May 13, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-11489 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6678

[AK-932-07-4220-10; AA-55135]

Public Land Order No. 6618, Correction; Revocation of Public Land Order No. 5548; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects the land description in Public Land Order (PLO) No. 6618.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6618 published at 51 FR 25205-25206, July 11, 1986, is hereby corrected as follows:

1. The land description on page 25205, third column, line 17, which reads "within T. 37 S., R. 64 E., secs. 19 and 20," is hereby corrected to read "within T. 41 S., R. 66 E., secs. 19 and 20."

2. The land description on page 25205, third column, line 25, is hereby corrected by adding and deleting the following described lands:

Copper River Meridian

Add

T. 41 S., R. 66 E.,
Sec. 29, NE¼SW¼.

Delete

T. 41 S., R. 66 E.,
Sec. 29, NW¼SW¼.

3. The correction in paragraph 1 has no effect on land status as the township and range are given only for the purpose of referencing the general location of U.S. Survey No. 1096.

4. The land added in paragraph 2 of this order is land that was initially intended to be made available for selection by the State of Alaska by PLO 6618. As provided by section 6(g) of the Alaska Statehood Act, supra, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available.

5. The land deleted in paragraph 2 of this order was interim conveyed from the general Government to Goldbelt, Inc. in May 1981. PLO 6618 purported to revoke the withdrawal on this conveyed land and make the land available for selection by the State of Alaska. As the land was no longer under Federal jurisdiction, PLO 6618 had no effect on land status and any notation to this effect shall be removed from the land status records.

6. This order does not change any provisions of PLO 6618, but only corrects errors which occurred therein.

Dated: May 13, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-11491 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-184; RM-5635]

Radio Broadcasting Services; Monticello, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Monticello, Arkansas, as that community's second local FM service, in response to a petition for rule making filed on behalf of Craig T. Dale. With this action, the proceeding is terminated.

DATES: Effective June 20, 1988; The window period for filing applications on Channel 260A at Monticello, Arkansas, will open on June 21, 1988, and close on July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–184, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by revising the entry for Monticello, Arkansas, to add Channel 260A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11515 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–453; RM–5739]

Radio Broadcasting Services; Bremen, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Bremen, Indiana, as that community's first local FM service, in response to a petition filed on behalf of Margaret E. Karwatka. With this action, the proceeding is terminated.

DATES: Effective June 24, 1988, the window period for filing applications on Channel 245A at Bremen, Indiana, will open on June 25, 1988, and close on July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–453, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Bremen, Channel 245A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11516 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–35; RM–5596]

Radio Broadcasting Services; Ellettsville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Ellettsville, Indiana, as that community's first local FM service, in response to a petition filed by Bruce Quinn. With this action, the proceeding is terminated.

DATES: Effective June 24, 1988. The window period for filing applications on Channel 286A at Ellettsville, Indiana, will open on June 25, 1988, and close on July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–35, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Ellettsville, Channel 286A, under Indiana.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11517 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–508; RM–5856]

Radio Broadcasting Services; Ida Grove, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Buena Vista College, substitutes Channel 225C2 for Channel 224A at Ida Grove, Iowa, and modifies its license for Station KIDA(FM) to specify operation on the higher powered channel. Channel 225C2 can be allocated to Ida Grove in compliance with the Commission's minimum distance separation requirements and can be used at Station KIDA(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 42–15–16 and West Longitude 95–23–29. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–508,

adopted April 7, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Iowa is amended by revising the entry for Ida Grove to delete Channel 224A and add Channel 225C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11518 Filed 5–20–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–393; RM–5966; RM–6170]

Radio Broadcasting Services; Roland and Heavener, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Family Broadcasting Company, allocates Channel 222A to Roland, Oklahoma, as the community's first local FM service. Channel 222A can be allocated to Roland in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) north to avoid a short-spacing to the pending application for Channel 223A at Heavener, Oklahoma (ARN–871124NZ). The Commission also denies the counterproposal of Double Eagle Broadcasting Corp. to substitute Channel 223C2 for Channel 222A at Heavener, Oklahoma. With this action, this proceeding is terminated.

DATES: Effective June 24, 1988. The window period for filing applications will open on june 27, 1988, and close on July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–393, adopted April 5, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by adding the following entry, Roland, Channel 222A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11519 Filed 5–20–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. 64h]

Participation by Minority Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Congress recently enacted section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987. This section requires the application to the Federal Aviation Administration's airport financial assistance program of the provisions of the Department's disadvantaged business enterprise (DBE) rule previously applicable only to the Federal Highway Administration's and Urban Mass Transportation Administration's programs. This rule makes this change.

DATES: This rule is effective on May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Congress recently passed, and the President signed, section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987. This provision establishes a statutory disadvantaged business enterprise (DBE) program in Federal Aviation Administration (FAA) financial assistance programs for airports. The content of the provision is taken virtually verbatim from section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Because the Department had already made changes to its DBE program regulation in response to section 106(c) (52 FR 39225; October 21, 1987), it is not necessary to make further substantive changes in the regulations as a result of the new FAA statutory provision. However, it is necessary to make technical and conforming amendments to the regulation in order to specify that Subpart D of the rule (which previously has applied only to the Department's highway and mass transit financial assistance programs) now applies to FAA recipients as well as to UMTA and FHWA recipients. This final rule makes those needed amendments.

The October 21 amendments to Part 23 have not yet appeared in the printed volumes of the Code of Federal Regulations, and many persons interested in the airport program probably were not aware of Part 23 amendments many of which, when made, pertained only to highways and mass transit. Therefore, we are providing the following summary of the October 21 amendments, which now will apply to the airport program as well:

Section 23.45 (e) and (f) were amended to require that addresses of DBE firms be listed in recipients' directories and that recipients take a number of procedural steps when certifying DBEs (on-site visits, obtaining work histories of the firm and its principal owners, interviewing the principal owners, analysis of stock ownership, analysis of bonding and financial capacity of the firm, list of equipment and licenses held by the firm and its key personnel, and a statement of the type of work the firm prefers to do).

Section 23.45(g) was amended to require a single overall and a single contract goal for DBEs (as opposed to separate goals for WBEs and DBEs).

Section 23.47(e) was amended to provide that 60 percent of the value of supplies

purchased from a DBE "regular dealer" could be counted toward DBE goals (formerly, only 20 percent could be counted). The amendment also included a definition of "regular dealer" and clarification of the "commercially useful function" concept.

Section 23.62 was amended to exclude from the definition of "small business concern" firms whose average gross annual receipts over three years exceed $14 million and to include women in the definition of "socially and economically disadvantaged individuals".

Technical amendments and conforming changes to the explanatory material in Appendix A to Subpart D of the regulation were also made.

The Department's action is required by statute. Since the Department has no discretion in the matter, and because it is important to conform to a Congressional enactment as soon as possible, the Department is issuing this rule as a final rule, effective upon publication.

While the rule will cause recipients to make certain administrative changes in their programs (e.g., have a single DBE goal instead of separate minority and women's business enterprise goals, as in the past, and establishing a third-party challenge procedure), we do not believe that these administrative changes are likely to be unduly disruptive. For example, the same recipients who have had MBE programs will now have DBE programs. The FAA will shortly issue guidance to its grantees concerning the transition to administering their programs under Subpart D.

Another provision of the Airport and Airway Safety and Capacity Expansion Act concerns participtipon by DBE firms in the airport concessions business. This rule does not attempt to implement this statutory provision, which will require the development of new substantive regulations. The Department hopes to propose these new regulations for public comment along with other revisions to Part 23 which are now being reviewed within the Department.

Regulatory Process Matters

The Department has determined that this rule does not constitute a major rule under the criteria of Executive Order 12291. It is a nonsignificant rule under the Department's Regulatory Policies and Procedures. Since the regulation simply makes administrative adjustments to an existing program expressly required by statute, its economic impacts are expected to be small, and the Department has consequently not prepared a regulatory evaluation. For this reason, the Department certifies that the rule does not have a significant economic impact on a significant number of small entities. Also, the Department certifies, in accordance with Executive Order 12612, that the rule does not have significant Federalism implications to warrant the preparation of a Federalism assessment.

The rule concerns matters under Federal grants, and hence is exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)). In addition, the rule must be implemented rapidly, in order to ensure that the provisions apply to funds authorized by the Act, as Congress intended. For these reasons, the Department has determined that there is good cause to promulgate these portions of the rule without prior notice and comment (see 5 U.S.C. 553(b)(B)) and to make the rule effective immediately, rather than after a 30-day period (see U.S.C. 553(c)(3)).

List of Subjects in 49 CFR Part 23

Minority businesses, Highways, Mass Transportation.

Issued in Washington, DC, on May 17, 1988.

Jim Burnley,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation amends 49 CFR Part 23 as follows:

PART 23—[AMENDED]

1. The authority citation for Part 23 is revised to read as follows:

Authority: Sec. 905 of the Regulatory Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987; sec. 19 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1615); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17); sec. 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223); Title 23 of the U.S. Code (relating to highways and traffic safety, particularly sec. 324 thereof); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); Executive Order 12265; Executive Order 12138.

2. Section 23.61(a) is amended by revising the first sentence up to the first comma to read as follows:

§ 23.61 [Amended]

(a) The purpose of this subpart is to implement section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17) and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223) so that,

* * *

3. Section 23.61(b) is amended by adding the words "and section 105(f)" after the words "section 106(c)".

4. Section 23.62 is amended by revising the definition of "Act" to read as follows:

§ 23.62 [Amended]

* * * * *

"Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17), with respect to financial assistance programs of the FHWA and UMTA, and the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223), with respect to FAA programs.

5. Section 23.63 is amended by adding a new paragraph (d), to read as follows:

§ 23.63 [Amended]

* * * * *

(d) Funds authorized under section Title I of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223).

§ 23.64 [Amended]

6. Section 23.64 is amended, in paragraph (b)(2) thereof, by adding the words "or airport" after the words "urban mass transportation" and by adding the words "or FAA" after the word "UMTA".

7. Section 23.64 is amended, in paragraph (c) thereof, by substituting the words "Federal-aid highway funds, urban mass transportation funds, or airport funds" for the words "Federal-aid highway funds or urban mass transportation funds"; and, in paragraphs (c) and (e) thereof, by adding the words "or FAA" after the word "UMTA" in each instance in which the word "UMTA" occurs.

8. Section 23.64 is amended, in paragraph (e)(2), by deleting the word "or" following the words "(* * * state transportation agency)", by inserting a comma (,) at that point, and by adding, after the semicolon, the words "or, with respect to an airport sponsor, the elected official, head of the board, or other official responsible for the operation of the sponsor,".

§ 23.65 [Amended]

9. Section 23.65 is amended, in its first line, by adding the words "or FAA" following the word "UMTA".

§ 23.68 [Amended]

10. Section 23.68 is amended, in paragraph (e)(2), by adding the words "or FAA" after the word "UMTA", both times the word "UMTA" occurs.

Appendix A—[Amended]

11. The portion of Appendix A, following Subpart D, entitled "Section 23.61 Purpose" is amended by adding, before the period (.) at the end of the first sentence, the words "and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987" and by adding the words "and section 105(f)" after the words "section 106(c)" in both places in the last sentence of the paragraph in which the words "section 106(c)" appear.

12. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by adding before the period in the first sentence, the words "Airport and Airway Safety and Capacity Expansion Act of 1987".

13. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing from the second sentence of the second paragraph under the title "Socially and economically disadvantaged individuals" the word ",FAA" following the word "FRA" and, in the same sentence, by substituting the words "FHWA, UMTA and FAA" for the words "FHWA and UMTA".

14. The portion of Appendix A, following Subpart D, entitled "Section 23.63 Applicability." is amended, in the first paragraph, in the first sentence thereof, by substituting the words "a number of" for the word "two"; in the third and fifth sentences thereof, by adding the words "or FAA" after the word "FWHA" in both instances in which the word "FHWA" occurs; and in the fifth sentence thereof, by adding the words "or otherwise to acquire land" after the words "to acquire right-of-way".

15. The portion of Appendix A, following Subpart D, entitled "Section 23.63 Applicability." is amended by adding the following sentence to the second paragraph thereof.

The provisions of Subpart D also apply to the FAA-administered airport funds authorized by the Airport and Airway Safety and Capacity Expansion Act of 1987.

16. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended by adding the words "or FAA" after the word "UMTA" in the last sentence of the first paragraph thereof and by adding a new sentence before the present last sentence of the first paragraph, to read as follows:

Recipients of FAA airport program funds who receive planning funds in excess of $75,000 or more than $250,000 (general aviation airports), $400,000 (non-hub airports), or $500,000 (hub airports) in FAA assistance also must submit overall goals.

17. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended by adding, in the second paragraph, the words "or FAA" after the word "UMTA", in both instances in which the word "UMTA" appears.

18. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended, in the fourth paragraph, in the first sentence, the words "or FAA" after the word "UMTA" in the first instance in which the word "UMTA" appears and by substituting for the subsequent words "UMTA and FHWA" the words "UMTA, FHWA, or FAA".

19. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended by adding, in the seventh paragraph, the second sentence thereof, the words "or airport sponsor" after the words "mass transit agency".

20. The portion of Appendix A, following Subpart D, entitled "Section 23.65 Content of Justification." is amended, in the last sentence thereof, by substituting the words "FHWA, UMTA, or FAA" for the words "FHWA and UMTA".

21. The portion of Appendix A, following Subpart D, entitled "Section 23.66 Approval and Disapproval of Overall Goals." is amended by substituting, in the third sentence thereof, the words "FHWA, UMTA or FAA" for the words "FHWA and UMTA".

22. The portion of Appendix A, following Subpart D, entitled "Section 23.68 Compliance." is amended by substituting, in the final sentence of the last paragraph thereof, the words "FHWA, UMTA or FAA" for the words "UMTA or FHWA".

[FR Doc. 88–11537 Filed 5–20–88; 8:45 am]
BILLING CODE 4910–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Animals and Birds to the United States; Enforcement Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of enforcement policy.

SUMMARY: The U.S. Fish and Wildlife Service announces the policy for the enforcement of Humane and Healthful Transport regulations. This policy aids affected members of the public in better understanding the regulations.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mary E. Monaghan, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: The Service published a final rule on November 10, 1987, (52 FR 43274) that set the standards for the humane and healthful transport of wild mammals and birds into the United States. After publication of the rule, the Service received additional comments from affected members of the public maintaining some of its provisions were not clear, were unreasonable, or could actually result in inhumane shipping conditions.

Pursuant to court order these regulations were made effective retroactively to February 8, 1988. The Service is reviewing the regulations for the purpose of making improvements and clarifications (See 53 FR 15041). During this period of review, and any subsequent proposal to amend the rule, the Service intends to enforce the provisions of the regulations in a reasonable and prudent manner.

Responsible parties are expected to comply with these regulations and insure that any wildlife is transported under humane and healthful conditions The Service recognizes that there may be special circumstances where strict compliance with these regulations

would not be in the best interest of the wildlife, or where strict compliance would provide no additional benefit to the wildlife and would be highly impracticable. The burden of showing that these special circumstances exist shall be on the responsible party.

Any deviation from the provisions of these regulations will be examined on a case by case basis. Each examination will take into consideration the reason for the deviation, i.e. a deviation was made in the crating requirements for the benefit of the species contained therein, a deviation was made because the provisions of the rule were in conflict with the provisions of other regulations, or a deviation was made in a requirement when the circumstances were such that compliance with the regulations would have caused harm to the wildlife. Any violations which could result in identifiable harm, distress, injury or death of the wildlife will be referred to the Department of Justice for prosecution.

Date: May 17, 1988.

Steve Robinson,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-11426 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

School Breakfast Program; Nutritional Improvements and Offer Versus Serve

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the breakfast meal pattern for the School Breakfast Program to implement several provisions of the School Lunch and Child Nutrition Amendments of 1986. This rule proposes to require that school breakfasts include fluid milk, fruit or vegetable or full strength juice and *two* servings of bread or meat or their alternates or one of each. This rule also proposes to allow schools to permit students to refuse one food item of a breakfast. This rule is expected to improve the nutritional quality of breakfasts offered under the program while maintaining local flexibility.

DATE: To be assured of consideration, comments must be submitted on or before July 22, 1988.

ADDRESS: Comments should be sent to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura at the above address or phone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The School Breakfast Program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520) are included in this proposed rule. The School Breakfast Program data collection and recordkeeping requirements have been approved by OMB (OMB No. 0584–0012).

Background

Breakfasts served under the School Breakfast Program are now required to include the following components:

(1) One-half pint of fluid milk;

(2) One-half cup of fruit and/or vegetable or full strength fruit or vegetable juice; and

(3) One slice of whole-grain or enriched bread or the equivalent amount of a bread alternate or ¾ cup or one ounce, whichever is less, of whole-grain, enriched or fortified cereal.

In addition, breakfasts for children over one year of age shall, to the extent practicable, contain a serving of meat or an approved meat alternate such as cheese or peanut butter.

The Department has conducted national evaluations of the School Nutrition Programs to determine whether or not the nutritional objectives of these programs are being met. These evaluations have concluded that the breakfast served through the School Breakfast Program is superior to home breakfasts with respect to milk related nutrients (protein, calcium, phosphorous, and magnesium). However, the school breakfast provides significantly less iron and vitamin A than home breakfasts due in part to the fact that larger servings of foods containing iron are consumed at home. Based on a review of these findings, the Department has concluded that the iron content of program breakfasts needs to be increased. An additional 4.6 milligrams of iron per week is needed to raise the iron content of school breakfasts to the level of home breakfasts. The Department believes that increasing the level of iron in the school breakfast will also increase the levels of many other nutrients which occur in combination with iron.

In an effort to improve the nutritional integrity of the School Breakfast Program, Congress included provisions in the School Lunch and Child Nutrition Amendments of 1986 (Pub. L. 99–591) directing the Department to review and revise the nutritional requirements for breakfasts served under the School Breakfast Program and the Child Care Food Program to improve their nutritional quality. To facilitate improvements, the reimbursement for all breakfasts served under the programs was increased by three cents per meal. Further, the law increased State and local flexibility by extending the "offer versus serve" option to school breakfasts. Under this provision, students would be permitted to refuse one food item that they do not intend to consume.

On April 16, 1987, the Department published a proposed rule at 52 FR 12419 to amend the meal pattern requirements to implement those provisions of the law. The proposal would have required schools to offer iron fortified cereal (defined as cereal fortified to at least 25 percent of the U.S. Recommended Dietary Allowance for iron per one ounce or three-fourths cup) as a daily choice in the School Breakfast Program. The proposal would also have permitted schools, at the discretion of the school food authority, to allow students to refuse one food item provided that an additional bread/bread alternate item was offered. In other words, if the

school offered two bread/bread alternate items, one fruit/vegetable or juice item, and milk, a student could refuse any one of those four food items.

Commenter Reaction

During the comment period that followed, the Department received 187 comments from members of Congress, State education agencies, local school food authorities, food service managers of local schools, medical and nutritional professionals (individuals and associations), food processors and industry representatives. A majority of commenters disapproved of the proposal to require that 25 percent iron fortified cereal be offered to children daily. Major concerns cited by commenters included the following: Cost factors; children's lack of acceptance of highly fortified cereals; and lack of bio-availability of iron; the high sugar level of many iron fortified cereals; a general opposition to the use of any fortified foods; and the concern that the U.S. Recommended Dietary Allowance for iron may be excessive for younger children.

The provision authorizing schools to implement an "offer versus serve" (OVS) option for breakfast attracted fewer comments (37), and those comments were about evenly divided between approvals and disapprovals. Most of the disapprovals were based on the belief that the nutritional value of school breakfasts would be undermined if students could refuse an item. Other commenters believed that children could be confused by the differing OVS requirements for breakfasts and lunches, and some commenters appeared to have misinterpreted the proposal to mean that OVS would be mandated whenever two bread/bread alternates were served at breakfast. With respect to these last comments, the Department wishes to stress that the proposal would *not have required* schools to implement OVS under any circumstances. Under the proposal, school food authorities would have been *allowed* to institute OVS provided they offered an extra bread/or bread alternate item.

The Department also believes that some of the adverse comments on 25 percent iron fortified cereal may have been based on a misinterpretation of the proposed rule. Some commenters appeared to believe that the only bread/bread alternate allowed to be served to participating children under the proposed rule would have been 25 percent iron fortified cereal. The Department emphasized that this was not the case. The proposal would have required that 25 percent iron fortified cereal be *offered* to children every day, along with *any other* bread/bread alternate items offered by the school for selection by the students. The word "offered", as used in this case, refers to making an item available as a choice, which is different from requiring that the item be served. The Department considered that this provision would afford children the opportunity to increase their daily intake of iron through the most accessible source for schools. However, as was stated in the preamble to the proposed rule, the Department has no wish to limit the School Breakfast Program to a "cereal only" program or to restrict schools' flexibility. It was for this reason that the proposal also encouraged schools to continue serving a variety of foods, including meat/meat alternates as often as practicable.

Nevertheless, in response to commenters' concerns about the previously proposed rule, the Department has reconsidered this issue and has decided to issue a reproposal to amend the breakfast meal pattern. This reproposal will expand and clarify the options available to schools for improving the nutritional quality of school breakfasts and for implementing OVS. Also, it will afford interested parties the maximum opportunity to comment.

Proposed Meal Pattern Requirements

As noted previously in this preamble, studies have shown that children who eat at home eat larger portions and, therefore, receive significantly greater amounts of certain nutrients than children who eat breakfast at school For this reason, the Department is proposing to require that an additional food item be added to school breakfasts. Under this proposal, school breakfasts would continue to include ½ pint of fluid milk and ½ cup or fruit or vegetable or full-strength juice. In addition, schools would have to offer one of the following options to complete the breakfast:

- Two servings of bread or bread alternate;

or

- Two servings of meat or meat alternate;

or

- One serving of bread or bread alternate and one serving of meat or meat alternate.

The Department believes this breakfast pattern will achieve the goal of increasing the level of iron in school breakfasts while at the same time providing schools with flexibility in menu planning and containing costs.

Many schools are already serving varied breakfasts containing four food items, and those schools would not have to alter their current practices. Schools which currently serve the basic three item breakfasts would be able to meet the proposed requirement by adding a relatively inexpensive fourth item to the breakfast or by offering a double serving of an item such as cereal, toast, muffin or pancakes. A daily serving of a second slice of whole wheat toast or a double sized corn muffin or a double sized serving of cereal would enhance the iron content of school breakfasts considerably.

In selecting breakfast items, schools have a variety of low cost, nutritious breakfast foods to choose from. Some examples of foods which are inexpensive yet provide iron are whole grain or enriched bread products such as toast, bagels, muffins, biscuits, cereal, pancakes, and waffles. Other foods that provide iron and can be served as meat alternates are eggs and peanut butter. Some of these items would not, by themselves, increase iron intake by the desired 4.6 miligrams per week. However, the Department envisions that these items, and others high in iron, would be used in combination with one another. Although the iron content of food items varies considerably, the Department believes that, over a menu cycle, school food service professionals will serve foods that, in combination, increase iron consumption to the desired levels. For example, on one day, a school could meet the meal pattern requirements with a selection that would not significantly increase the intake of iron above the level provided by one serving of a bread/bread alternate (e.g. a cheese omelet) and compensate the next day by providing a double serving of a cereal high in iron. Since iron is stored in the body, it is the average intake over a number of days that is important, not the specific level on a given day.

Finally, where necessary, a school could meet the fruit/vegetable requirement and *one* of the bread/bread alternate requirements by serving a fortified grain-fruit product. Therefore, the Department is proposing to amend Appendix A to specify the breakfast requirements that can be met with formulated grainfruit products. The Department is also proposing to amend the legend that is required to appear on labels for grain-fruit products to conform to this new requirement. The Department wishes to emphasize, however, that the Department would allow at least 90 days for relabeling should this provision become final.

The Department is also aware that Congressional leadership has expressed an interest in requiring school to serve

an egg at least once a week. The Department is reluctant to propose such a mandate at this time. However, the Department wishes to remain responsive to Congressional ideas for enhancing school breakfasts. Commenters are invited to comment on the feasibility and desirability of incorporating this requirement into the breakfast meal pattern.

The Department is concerned about those schools that may not be in a position to prepare the more complex breakfasts offered in some schools. Consequently, with this proposal, the Department is hoping to find a solution to the problem of increasing the nutritional value of the school breakfast without establishing an unworkable or unaffordable breakfast meal pattern. The Department believes that this proposal will provide a "workable" meal pattern for the school food service professionals who are in the best position to evaluate their students's needs and preferences and accordingly serve the appropriate breakfast.

The Department also considered the possibility of allowing schools the option of serving a three-item breakfast consisting of milk, fruit/vegetable or juice, and one serving of a cereal with high iron content in lieu of or alternating with the four-item breakfast. Such a proposal was not supported by commenters and may limit variety in the breakfast menu. For these reasons, the Department has decided not to propose a three-item breakfast containing iron-fortified cereal at this time. Nevertheless, the Department invites commenters to suggest workable three-item breakfasts that would address the need to increase the iron content and that might be considered for a future rulemaking.

To aid in the absorption of iron, the Department recommends that citrus fruit or juice or another fruit or vegetable or juice high in Vitamin C be served daily. The Department solicits comments on whether or not the daily service of a good vitamin C source should be *required.*

Offer Versus Serve

This proposed rule would also *allow* school food authorities to implement OVS for their breakfast programs. Students could then be allowed to refuse *any one* food item of the four offered. This proposal is intended to comply with the statutory mandate to provide school food authorities with flexibility and to reduce plate waste. The Department emphasizes, however, that schools would *not* be required to implement OVS; this decision would be purely a local option. The Department would prefer that children accept all items in a four item breakfast to provide an enhanced level of nutrients. Nevertheless, the Department recognizes that requiring all children to accept all four items might result in increase plate waste. This proposal, therefore, will enable schools to avoid exessive plate waste when larger breakfasts are served. OVS will also provide schools with another tool for containing costs.

Technical Amendments

Finally, the Department is proposing several technical amendments in this rule. A breakfast meal pattern chart would be included in § 220.8. The table would update existing requirements to include the proposed provisions and is expected to clarify the meal pattern requirements. In addition, the regulatory language, including the newly added table, is revised to include the provisions of the previously issued final rule that allows nuts and seeds and nut or seed butters to be used as meat alternates (51 FR 16807, published May 7, 1986) in the National School Lunch Program. While the provisions of that rule were administratively extended to cover the breakfast program, no regulatory changes were made in Part 220 at that time since the services of meat/meat alternates in the breakfast program is a recommendation, not a requirement.

Child Care Food Program

The Department will address the Child Care Food Program separately at a later date.

List of Subjects in 7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agriculture commodities.

Accordingly, 7 CFR Part 220 is proposed to be amended as follows:

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 is revised to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.8:

a. Paragraph (a) is revised.

b. Paragraphs (b)(1) and (b)(3) are removed; paragraph (b)(2) is redesignated as paragraph (b) and a title is added to read *"Infant meal pattern"*; and previously designated paragraphs (b)(2)(i), (iii) are redesignated as paragraphs (b)(1), (2), and (3) respectively.

§ 220.8 Requirements for breakfast.

(a)(1) *Food Components.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (a)(2) of this section:

(i) A serving of fluid milk served as a beverage or on cereal or used in part for each purpose;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Bread/Bread alternate.

(B) Meat/Meat alternate.

(2) *Minimum required breakfast quantities.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain at least the per breakfast minimum quantities of each item for the age and grade levels specified in the following table:

SCHOOL BREAKFAST MEAL PATTERN—REQUIRED MINIMUM SERVING SIZES

Food components/items	Ages 1 and 2	Ages 3, 4 and 5	Grades K–12
MILK (Fluid):			
(As a beverage, on cereal, or both)	1/2 cup	3/4 cup	1/2 pint.
JUICE/FRUIT/VEGETABLE [1]			
Fruit and/or vegetable; or Full-strength: Fruit Juice or vegetable Juice	1/4 cup	1/2 cup	1/2 cup.
BREAD/BREAD ALTERNATIVES [2]			
Bread (whole-grain or enriched)	1/2 slice	1/2 slice	1 slice.

SCHOOL BREAKFAST MEAL PATTERN—REQUIRED MINIMUM SERVING SIZES—Continued

Food components/items	Ages 1 and 2	Ages 3, 4 and 5	Grades K-12
Biscuit, roll, muffin or equal serving of cornbed, etc. (whole-grain or enriched meal or flour).	1/2 serving	1/2 serving	1 serving.
Cereal (whole-grain or enriched or fortified)	1/4 cup or 1/3 cup oz	1/3 cup or 1/2 oz	3/4 cup or 1 oz.
MEAT/MEAT ALTERNATES:			
Meat, poultry, or fish	1/2 oz	1/2 oz	1 oz.
Cheese	1/2 oz	1/2 oz	1 oz.
Egg	1	1	1
Peanut Butter or other nut or seed butters	1 Tbsp	1 Tbsp	2 Tbsp.
Cooked dry beans and peas	2 Tbsp	2 Tbsp	4 Tbsp.
Nuts and/or Seeds (as listed in program guidance)	1/2 oz	1/2 oz	1 oz.

[1] A citrus juice or fruit or a fruit or vegetable or juice that is a good source of vitamin C (See Menu Planning Guide for School Food Service—PA-1260) is recommend to be offered daily.
[2] See Food Buying Guide for Child Nutrition Programs, PA-1331 (1984) for serving sizes for breads and bread alternates.
[3] No more than one ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (a)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

* * * * *

3. Appendix A of Part 220 is proposed to be amended as follows:

A. Paragraph 1(a) is revised.

b. The third and fourth sentences of the quotation in paragraph 1(b) are removed, and a new sentence is added in their place. The addition and revision read as follows:

Appendix A—Alternate Foods for Meals Formulated Grain-Fruit Products

1. * * *

(a) Formulated grain-fruit products may be used to meet *one* bread/bread alternate and the fruit/vegetable requirement in the breakfast pattern specified in § 220.8.

(b) * * * For breakfasts, it meets the requirements for fruit/vegetable/juice and one bread/bread alternate. * * *

* * * * *

Anna Kondratas,

Administrator.

Date: May 17, 1988.

[FR Doc. 88-11512 Filed 5-20-88; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Prohibition on Direct Payment of Fees to Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: We are withdrawing the proposed amendments to the regulations which were published in the **Federal Register** on March 17, 1987 (52 FR 8309), because of a U.S. Supreme Court decision which eliminates the need for over proposed rules.

DATE: The withdrawal is effective May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: We published a Notice of Proposed Rulemaking (NPRM) to clarify our policy of not withholding a recipient's retroactive supplemental security income (SSI) benefits to pay a representative's fees. In a recent decision (*Bowen, Secretary of Health and Human Services* v. *Galbreath*, 56 U.S.L.W. 4187 (U.S. Feb. 24, 1988)), the U.S. Supreme Court ruled that Federal courts lack the authority to order the Secretary of Health and Human Services to withhold a portion of past-due SSI benefits to pay attorneys' fees incurred in title XVI cases. This decision reversed the judgment of the U.S. Circuit Court of Appeals for the Eighth Circuit in *Galbreath* v. *Bowen*, 799 F. 2d 370 (8th Cir. 1986), which had affirmed the district court order that required the Secretary to withhold a portion of Ms. Galbreath's past-due SSI benefits to pay her attorney fees.

Because of the Supreme Court decision, the proposed clarifying amendments to or current rules in 20 CFR 416.1520 and 416.1528 are no longer needed. Accordingly, the NPRM published in the **Federal Register** at 52 FR 8309 on March 17, 1987, entitled Prohibition on Direct Payment of Fees to Representatives is withdrawn.

Dated: April 26, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 16, 1988.

Don M. Newman,

Acting Secretary of Health and Human Services.

[FR Doc. 88-11364 Filed 5-20-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 67

Historic Preservation Certification; Tax Benefits

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule restates and makes amendments to the procedures by which owners desiring tax benefits for rehabilitation of historic buildings apply for certifications pursuant to section 48(g) and section 170(h) of the Internal Revenue Code of 1986. These tax laws require certifications from the Secretary of the Interior in order for taxpayers to receive tax benefits. This rule establishes procedures whereby taxpayers apply for these certifications. This rule also establishes procedures to qualify historic properties for Federal income and estate tax deductions for charitable contributions of partial interests in real property.

DATE: Written comments must be delivered or mailed by July 22, 1988.

ADDRESS: Send comments to: Associate Director, Cultural Resources, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: H. Ward Jandl, Chief, Technical Preservation Services Branch,

Preservation Assistance Division, (202) 343–9584, or Carol D. Shull, Chief of Registration, National Register Branch, Interagency Resources Division, (202) 343–9536, National Park Service, P.O. Box 37127, U.S. Department of the Interior, Washington, DC. 20013–7127.

SUPPLEMENTARY INFORMATION: On October 7, 1977, a final rulemaking was published in the **Federal Register** (42 FR 54548) to amend Title 36 of the Code of Federal Regulations by adding a new Part 67 concerning historic preservation certifications made by the Secretary of the Interior pursuant to the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1519). Between February 1978 and June 1981, this rulemaking was designated and transferred to Title 36 CFR Part 1208.

On November 6, 1978, the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2828) became law, necessitating amendments to the regulations. Section 701(f) of this act clarified portions of section 2124 of the Tax Reform Act of 1976, while section 315 provided an investment tax credit to encourage the rehabilitation of older buildings. Certifications of rehabilitation by the Secretary were required if an owner chose to elect the tax credit when the building was a "certified historic structure." On December 19, 1980, a final rulemaking was published in the **Federal Register** (45 FR 83488) incorporating these changes from the Revenue Act of 1978.

On December 17, 1980, the Tax Treatment Extension Act of 1980 (Pub. L. 96–541, 94 Stat. 3204) became law, providing a three-year extension of tax provisions relating to historic preservation and revising and making permanent rules allowing deductions for charitable contributions of qualified interests in real property for conservation purposes. On August 31, 1981, the Economic Recovery Tax Act of 1981 (Pub. L. 97–34, 95 Stat. 172) became law, replacing existing tax incentives for historic buildings with a new 25 percent investment tax credit and repealing and replacing certain tax provisions contained within the Tax Reform Act of 1976 and the Revenue Act of 1978. Additional modifications to the tax credits were made in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), signed into law September 3, 1982. On March 12, 1984, a final rulemaking was published in the **Federal Register** (49 FR 9302) to incorporate changes brought about by the legislation described above and to modify the certification process, including the establishment of a fee system for the processing and review of rehabilitation certification requests.

On October 22, 1986, the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) became law, replacing existing tax incentives for historic buildings with a 20 percent investment tax credit.

The proposed rule incorporates changes brought about by the Tax Reform Act of 1986, but the certification process a taxpayer must follow remains the same as under previous regulations: The taxpayer continues to complete an application form, which is then reviewed by the State Historic Preservation Officer (SHPO) and the National Park Service (NPS). Notification as to certification continues to be made by the NPS after considering the recommendations of SHPOs. The proposed rule eliminates the system of expedited review for qualified States in existing regulations. The change reflects the increased reliance by the NPS on recommendations from *all* SHPOs providing evidence of a thorough review. In such cases the recommendations of SHPOs are generally followed, but by law all certification decisions are made by the Secretary, and the decision of the Secretary may differ from the recommendation of the SHPO.

In addition, the proposed rule reinstates at § 67.2 the definition of State Historic Preservation Officer as the State official designated to act as liaison for purposes of reviewing and commenting upon historic preservation certification applications. Section 67.3 has been revised to make clear that the NPS decision with respect to certification is made on the basis of the written descriptions in the application form. In the event of discrepancies between the application form and other, supplementary material submitted with it (such as architectural plans, drawings and specifications), the application form shall take precedence. The penalties for falsification of factual representations in the application have also been specified. This section has also been modified to state that the review period for certification requests is 30 days at the State level and 30 days at the Federal level upon receipt of a complete, adequately documented application. Such time periods are not binding, however.

With respect to individual listings in the National Register of Historic Places containing more than one building, § 67.4 has been revised to make clear that the owner must request a certification of significance for all the buildings in such listings, and to clarify the provision in existing regulations concerning buildings judged by the Secretary to have been functionally related historically to serve an overall purpose. Such structures will be treated as a single certified historic structure when rehabilitated as part of an overall project. A sentence has been added to § 67.6 to specify that for projects involving multiple buildings lacking a historic functional relationship, the certification decision will be made for each building regardless of their grouping for ownership or development purposes.

Section 67.4 has been revised to require that an owner notify the Secretary of any substantial damage to a certified historic structure caused by fire or other reason except rehabilitation work and to permit the Secretary to withdraw a certification of significance. Section 67.4 has also been revised to make clear that the Secretary may require additional specific information on the significance of a building that is not contained in the National Register documentation in order to issue certifications of significance or nonsignificance and to clarify when determinations of significance for buildings covered by nonhistoric surface material will be made.

Section 67.6 has also been revised to make clear that the Secretary will reivew a rehabilitation of a certified historic structure in a historic district first as it affects the structure and second as it affects the historic district. A new subparagraph has been added to this section covering phased projects; generally, final certification of phased projects will not be issued until all phases have been completed.

The Secretary of the Interior's Standards for Rehabilitation given as § 67.7 have been slightly modified from language in existing regulations. The basic preservation principles elucidated in the Standards, however, remain the same. The changes do not affect the manner in which the Secretary determines whether a rehabilitation project is consistent with the historic character of the structure and the district in which it is located. The Standards continue to apply to historic buildings of all materials, construction types, sizes, and occupancy, to the

exterior and the interior of historic buildings, to attached, adjacent, or related new construction, and to the site and environment of the historic buildings undergoing rehabilitation. Additionally, the requirements in existing regulations governing existing external walls contained in the Economic Recovery Tax Act of 1981 have been modified to reflect the changes enacted by the Tax Reform Act of 1986.

As a matter of usual practice, the Department publishes all agency rules for comments prior to making them effective. Because these rules apply to an ongoing program, the existing regulations will remain in place until such time as those proposed rules are made final. The Department will be receiving comments on these proposed rules within the time period specified above and will publish final rules after consideration of comments.

To permit a public understanding of the tax consequences of certifications made by the Secretary of the Interior, the following are general descriptions of the tax provisions contained in both current and prior laws. The term "depreciable property" as used in these descriptions means those properties subject to the allowance for depreciation under section 167 of the Internal Revenue Code and generally excludes owner-occupied homes.

The following general description is given of the tax provisions contained in section 2124 of the Tax Reform Act of 1976:

1. Section 2124(a). (section 191 of the Internal Revenue Code of 1954). Permitted a 60-month amortization of certain rehabilitation expenses made in connection with qualified depreciable properties. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

2. Section 2124(b). (section 280B of the Code). Disallowed a deduction for demolition expenses of qualified depreciable properties. This provision applied to demolitions beginning after June 30, 1976, and before January 1, 1984;

3. Section 2124(c). (section 167(n) of the Code). Generally precluded accelerated depreciation for buildings on the site of qualified depreciable properties. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

4. Section 2124(d). (section 167(o) of the Code). Provided special depreciation rules for qualified rehabilitated property. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

5. Section 2124(e). (sections 170(f)(3) and 170(h), 2055(e)(2) and 2522(c)(2) of the Code). Amended charitable contribution deductions on income, estate, and gift taxes to liberalize deductions for conservation purposes including the preservation of historically important land areas or certified historic structures.

The following general description is given of the tax provisions contained in Section 315 of the Revenue Act of 1978:

1. Section 315. (section 38 and section 48 of the Code). Permitted an investment tax credit for expenses incurred in rehabilitating depreciable properties. This provision was replaced effective January 1, 1982.

The following general description is given of the tax provisions contained in section 6 of the Tax Treatment Extension Act of 1980:

1. Section 6. (section 170(f)(3) and (section 170(h) of the Code). Permits charitable contribution deductions for income, estate, and gift taxes for qualified conservation contributions, including contributions of a qualified real property interest in a historically important land area or certified historic structure.

The following general description is given of the tax provisions contained in section 212 and section 214 of the Economic Recovery Tax Act of 1981:

1. Section 212(a). (section 46(b) and section 48(g) of the Code). Permitted a 25 percent investment tax credit on rehabilitation expenses incurred in connection with certified rehabilitation of a certified historic structure. This provision was replaced effective January 1, 1987, with a 20 percent investment tax credit described below.

2. Section 212(b). (section 48(g) of the Code). Precluded use of a 15 percent (buildings 30–39 years old) or 20 percent (buildings 40 years of older) investment tax credit for a rehabilitation of a building within a registered historic district unless the building is certified as not being of historic significance to the district.

3. Section 212(d). Repealed sections 167(n), 167(o), and 191 of the Code effective January 1, 1982.

The following general description is given of the tax provisions contained in section 251 of the Tax Reform Act of 1986, which also redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986:

1. Section 251(a). (section 46(b) and section 48(g) of the Internal Revenue Code of 1986). Permits a 20 percent investment tax credit on rehabilitation expenses incurred from January 1, 1987, in connection with a certified rehabilitation of a certified historic structure.

2. Section 251(b). (Section 48(g) of the Code). Precludes use of a 10 percent (buildings built before 1936) investment tax credit for a rehabilitation of a certified historic structure, including buildings within a registered historic district, unless the building is certified as not being of historic significance to the district.

The provisions described above require the Secretary of the Interior to make one or more of the following classes of certifications:

a. Certified Historic Structures. All the tax provisions described above are related to so-called certified historic structures, which are defined as qualified depreciable buildings that either are listed in the National Register or are located within a registered historic district and certified by the Secretary as contributing to the historic significance of the district. For purposes of other rehabilitation tax credits available under section 48(g) of the Internal Revenue Code, any building located in a registered historic district is considered a certified historic structure unless the Secretary of the Interior has determined that the building is not of historic significance to the district.

b. Certified Rehabilitations. In order for the tax consequences relating to rehabilitation to accrue, the Secretary must determine not only that the rehabilitation was undertaken on a certified historic structure but also that it meets certain standards with respect to the preservation of its historic character.

c. Certified Statutes and Certified State or Local Historic Districts. Qualified historic buildings located in historic districts designated under a statute of an appropriate State or local govenment are subject to the tax consequences discussed above if the statute is certified by the Secretary as containing criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district and if the district is certified by the Secretary as meeting substantially all the requirements for the listing of districts in the National Register.

Section 6 of the Tax Treatment Extension Act of 1980 (section 170(h)(4) of the Code), which explains what properties may qualify for the allowance of deductions for contributions of partial interests in property, lists four definitions for the term "conservation purpose." The last of these is "the preservation of a historically important land area or a certified historic structure." For purposes of this provision, the term "certified historic

structure" encompasses nondepreciable structures such as owner-occupied residences as well as depreciable structures and includes the parcels of land on which structures stand.

Historic structures within registered historic districts may qualify for charitable contributions through the certification of historic significance process (§ 67.4). This requirement is consistent with the provisions of the law.

Additional Considerations

These regulations are needed in order to provide guidance to the public as well as to government employees responsible for the implementation of the historic preservation certification process pursuant to section 48(g) and section 170(h) of the Internal Revenue Code of 1986. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Department of the Interior, the Department of the Treasury and the Internal Revenue Service, other government agencies, and the public.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291. These revisions do not result in an impact on the economy of $100 million or any of the other effects listed in the Executive Order. The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009.

Environmental Impact Statement

This rulemaking is developed under the authority of section 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C. 470a–1(a) (170 ed.), as amended; section 48(g) of the Internal Revenue Code of 1986 (90 Stat. 1519, as amended by 100 Stat. 2085) 26 U.S.C. 48(g) and section 170(h) of the Internal Revenue Code of 1986 (94 Stat. 3204) 26 U.S.C. 170(h). Such procedures have no potential for significant environmental impact and are categorically excluded from the requirement for compliance with the National Environmental Policy Act. Therefore, it is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Drafting Information

The originators of these procedures are H. Ward Jandl, Preservation Assistance Division; Carol D. Schull, Interagency Resources Division; and Lars A. Hanslin, Office of the Solicitor.

List of Subjects in 36 CFR Part 67

Administrative practice and procedures, Historic preservation, Income taxes.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Date: February 23, 1988.

In consideration of the foregoing comments, 36 CFR Part 67 is proposed to be revised as follows:

PART 67—HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO SECTION 48(g) AND SECTION 170(h) OF THE INTERNAL REVENUE CODE OF 1986

Sec.

Authority: Sec. 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C. 470a–1(a) (170 ed.), as amended; Sec. 48(g) of the Internal Revenue Code of 1936 (90 Stat. 1519, as amended by 100 Stat. 2085) 26 U.S.C. 48(g); and Sec. 170(h) of the Internal Revenue Code of 1986 (94 Stat. 3204) 26 U.S.C. 170(h).

§ 67.1 Section 48(g) and section 170(h) of the Internal Revenue Code of 1986.

(a) Section 48(g) of the Internal Revenue Code of 1986, 90 Stat. 1519, as amended by 100 Stat. 2085, and section 170(h) of the Internal Revenue Code of 1986, 94 Stat. 3204, require the Secretary to make certifications of historic district statutes and of State and local districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service (NPS); the following five regional offices issue certifications for the States listed below them.

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503:

Alaska

Mid-Atlantic Regional Office, National Park Service, U.S. Customs House, Second Floor, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106:

Connecticut
Delaware
District of Columbia
Indiana
Maine
Maryland
Massachusetts
Michigan
New Hampshire
New Jersey
New York
Ohio
Pennsylvania
Rhode Island
Vermont
Virginia
West Virginia

Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225:

Colorado
Illinois
Iowa
Kansas
Minnesota
Missouri
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
South Dakota
Texas
Utah
Wisconsin
Wyoming

Southeast Regional Office, National Park Service, 75 Spring Street SW, Atlanta, Georgia 30303:

Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Puerto Rico
South Carolina
Tennessee
Virgin Islands

Western Regional Office, National Park Service, 450 Golden Gate Avenue,

P.O. Box 36063, San Francisco, California 94102:

Arizona
California
Hawaii
Idaho
Nevada
Oregon
Washington

(b) The Washington office of the NPS establishes program direction and considers appeals of certification denials. The procedures for obtaining certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to the Secretary to make certification decisions. These procedures, upon their effective date, are applicable to future and pending certification requests.

(c) States receiving Historic Preservation Fund grants from the Department participate in the review of requests for certification, through recommendations to the Secretary by the State Historic Preservation Office (SHPO). The SHPO acts on behalf of the State in this capacity and not as an agent of the Federal government. The NPS is not responsible for any actions, errors or omissions of the SHPO.

(1) Requests for certifications and approvals of proposed rehabilitation work are sent by an owner first to the appropriate SHPO for review. State comments are recorded on National Park Service Review Sheets (NPS Forms 10–168 (d) and (e)) and are carefully considered by the Secretary before a certification decision is made. Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary, based upon professional review of the application and related information. The decision of the Secretary may differ from the recommendation of the SHPO.

(2) A State may choose not to participate in the review of certification requests. States not wishing to participate in the comment process should notify the Secretary in writing of this fact. Owners from such nonparticipating States may request certifications by sending their applications directly to the appropriate NPS regional office listed above. In all other situations, certification requests are sent first to the appropriate SHPO.

(d) The Internal Revenue Service is responsible for all procedures, legal determinations, and rules and regulations concerning the tax consequences of the historic preservation provisions described above. Any certification made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to tax consequences under the Internal Revenue Code. For example, certifications made by the Secretary do not constitute determinations that a structure is of the type subject to the allowance for depreciation under section 167 of the Code.

§ 67.2 Definitions.

As used in these regulations:

"Certified Historic Structure" means a building (and its structural components) which is of a character subject to the allowance for depreciation provided in section 167 of the Internal Revenue Code of 1986 which is either individually listed in the National Register; or located in a registered historic district and certified by the Secretary as being of historic significance to the district. Portions of larger buildings, such as single condominium apartment units, are not independently considered certified structures. Rowhouses, even with abutting or party walls, are considered as separate buildings. For purposes of the certification decisions set forth in this part, a certified historic structure also includes the site and environment of the structure. For purposes of the charitable contribution provisions only, a certified historic structure need not be depreciable to qualify; may be a structure other than a building; may also be a remnant of a building such as a facade, if that is all that remains; and may include the land area on which it is located. For purposes of the other rehabilitation tax credits under section 48(g) of the Internal Revenue Code, any building located in a registered historic district is considered a certified historic structure so that other rehabilitation tax credits are not available; exemption from this provision can generally occur only if the Secretary has determined, prior to the rehabilitation of the building, that it is not of historic significance to the district.

"Certified Rehabilitation" means any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, where applicable, with the district in which such structure is located.

"Duly Authorized Representative" means a State or locality's Chief Elected Official or his or her representative who is authorized to apply for certification of State/local statutes and historic districts.

"Historic District" means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically during the period of significance but linked by association or function.

"Inspection" means a visit by an authorized representative of the Secretary or a SHPO to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

"National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary is authorized to expand and maintain pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

"National Register Program" means the survey, planning, and registration program that is administered by the Secretary pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended. The procedures of the National Register program appear in 36 CFR Part 60, *et seq.*

"Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a building or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits.

"Registered Historic District" means any district listed in the National Register or any district (a) which is designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district, and (b) which is certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the Naticnal Register.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the Secretary.

"Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

"Standards for Rehabilitation" means the secretary's Standards for Rehabilitation set forth in § 67.7 hereof.

"State Historic Preservation Officer" (SHPO) means the official within each State designated by the Governor or a State statute to act as liaison for purposes of administering historic preservation programs within that State.

"State or Local Statute" means a law of a State or local government designating, or providing a method for the designation, of historic district or districts.

§ 67.3 Introductions to certifications of significance and rehabilitation and information collection.

(a) Who may apply:

(1) Ordinarily, only the fee simple owner of the building in question may apply for the certifications described in §§ 67.4 and 67.6 hereof. If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(2) Upon request of a SHPO the Secretary may determine whether or not a particular building located within a registered historic district qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the fee simple owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30-day time period to submit written comments to the Secretary prior to decision. Such time period for comment may be waived by the fee simple owner.

(3) The Secretary may undertake the certifications described in §§ 67.4 and 67.6 on his own initiative after notifying the fee simple owner and the SHPO and allowing a comment period as specified in § 67.3(a)(2).

(4) Owners of buildings which appear to meet National Register criteria but are not yet listed in the National Register or which are located within potential historic districts may request preliminary determinations from the Secretary as to whether such buildings may qualify as certified historic structures when and if the buildings or the potential historic districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for buildings outside the period or area of significance of registered historic districts as specified in § 67.5(c) Procedures for obtaining these determinations shall be the same as those described in § 67.4. Such determinations are preliminary only and are not binding on the Secretary. Preliminary determinations of significance will be made final as of the date of the listing of the individual building or district in the National Register. For buildings outside the period or area of significance of a registered historic district, preliminary determinations of significance will be made final, except as provided below, when the district documentation of file with the NPS is formally amended. If during review of a request for certification of rehabilitation, it is determined that the building does not contribute to the significance of the district because of charges which occurred after the preliminary determination of significance was made, certified historic structure designation will be denied.

(5) Owners of building not yet designated certified historic structures may obtain determinations from the Secretary on whether or not rehabilitation proposals meet the Secretary's Standards for Rehabilitation. Such determinations will be made only when the owner has requested a preliminary determination of the significance of the building as described in paragraph (a)(4) of this section and such request for determination has been acted upon by the NPS. Final certifications of rehabilitation will be issued only to owners of certified historic structures. Procedures for obtaining these determinations shall be the same as these described in § 67.6.

(b) How to apply:

(1) Requests for certifications of historic significance and of rehabilitation shall be made on Historic Preservation Certification Applications (NPS Form No. 10–168). The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009. Part 1 of the application shall be used in requesting a certification of historic significance or nonsignificance and preliminary determinations, while Part 2 shall be used in requesting an evaluation of a proposed rehabilitation project or a certification of a completed rehabilitation project. Information contained in the application is required to obtain a benefit.

(2) Application forms are available from NPS regional offices or the SHPOs.

(3) Requests for certifications, preliminary determinations, and approvals of proposed rehabilitation projects shall be sent to the SHPO in participating States. Requests in nonparticipating States shall be sent directly to the appropriate NPS regional office.

(4) Generally reviews of certification requests are concluded within 60 days of receipt of a complete, adequately documented application, as defined in §§ 67.4 and 67.6 (30 days at the State level and 30 days at the Federal level). Where a State has chosen not to participate in the review process, review by the NPS generally is concluded within 60 days of receipt of a complete, adequately documented application. Where adequate documentation is not provided, the owner will be notified of the additional information needed to undertake or complete review. The time periods in this part are based on the receipt of a complete application; they will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(5) Approval of applications and amendments to applications is conveyed only in writing by duly authorized officials of the NPS acting on behalf of the Secretary. Decisions with respect to certifications are made on the basis of the descriptions in the application form. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the application form shall take precedence. Falsification of factual representations in the application is subject to criminal sanctions of up to $10,000 in fines or imprisonment for up to five years pursuant to 18 U.S.C. 1001.

(6) It is the owner's responsibility to notify the Secretary if application reviews are not completed within the time periods specified above. The Secretary in turn will consult with the appropriate office to ensure that the review is completed in as timely manner as possible in the circumstances.

(7) Although certifications of significance and rehabilitation are discussed separately below, owners are encouraged to submit Part 1 of the Historic Preservation Certification Application prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented Part 1 is on file and acted upon unless the building is already a

certified historic structure. Reviews of rehabilitation projects will also not be undertaken if the owners has objected to the listing of the building in the National Register.

§ 67.4 Certifications of historic significance.

(a) Requests for certifications of historic significance should be made by the owner to determine—

(1) That a building located within a registered historic district is of historic significance to such district; or

(2) That a building located within a registered historic district is not of historic significance to such district; or

(3) That a building not yet on the National Register appears to meet National Register criteria; or

(4) That a building located within a potential historic district appears to contribute to the significance of such district.

(b) If a building is individually listed in the National Register it automatically is considered a certified historic structure, except as provided below.

(1) To determine whether or not a building is individually listed or is part of a district in the National Register, the owner may consult the listing of National Register properties in the **Federal Register** (found in most large libraries), or contact the appropriate SHPO for current information.

(2) If the building is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should refer to the delisting procedures outlined in 36 CFR Part 60.

(3) Some individual listings in the National Register include more than one building. In such cases, the owner must submit a Part 1 which describes all of the buildings within the listing. The Secretary will utilize the Standards for Evaluating Significance within Registered Historic Districts (§ 67.5) for the purpose of determining which of the buildings included within the listing are of historic significance to the property. In the event that the individually listed property has been subdivided into more than one ownership parcel after the date of listing or in the event the listing contains an extraordinary number of buildings, an owner may request from the NPS a written waiver from this requirement and specific instructions as to which buildings must be described.

(4) Owners shall report to the Secretary any substantial alterations or damage to a certified historic structure. The Secretary may withdraw a certification of significance, upon thirty days notice to the owner, if a building or its site and environment has been damaged by fire or other causes (other than rehabilitation work), effective as of the date of the occurrence. For damage caused by unacceptable rehabilitation work, see 36 CFR 67.6(f).

(c) If a building is located within the boundaries of a registered historic district and the owner wishes the Secretary to certify whether the building contributes or does not contribute to the historic significance of the district or if the owner is requesting a preliminary determination of significance in accordance with § 67.3(a)(4), the owner must complete Part 1 of the Historic Preservation Certification Application according to instructions accompanying the application. Such documentation includes but is not limited to:

(1) Name and mailing address of owner;

(2) Name and address of building;

(3) Name of historic district;

(4) Current photographs of building; photographs of the building prior to alteration if rehabilitation has been completed; photograph(s) showing the building along with adjacent buildings and structures on the street; and photographs of interior features and spaces adequate to document significance;

(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(6) Brief statement of significance summrizing how the building reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the building itself (i.e., unusual building techniques, important event that took place there, etc.).

(7) Sketch map clearly delineating building's location within the district; and

(8) Signature of fee simple owner requesting or concurring in a request for evaluation.

(d) Properties containing more than one building where the buildings are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the National Register or is located within a registered historic district, when rehabilitated as part of an overall project. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance. For questions concerning demolition of separate structures as part of an overall rehabilitation project, see § 67.6. In the case of buildings within a registered historic district that are judged to be functionally related historically, the functional unit as well as its component buildings will be evaluated to determine if they contribute both to the unit and to the historic significance of the district as in § 67.4(h).

(e) Applications for preliminary determinations for individual listing must show how the building individually meets the National Register Criteria for Evaluation. An application for a building located in a potential historic district must document how the district meets the criteria and how the building contributes to the significance of that district. An application for a preliminary determination for building in a registered historic district which is outside the period or area of significance in the district documentation on file with the NPS must document and justify the expanded significance of the district and how the building contributes to the significance of the district or document the individual significance of the building. Applications must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR Part 60 and National Register Bulletin 16, "Guidelines for Completing National Register of Historic Places Forms" (available from SHPOs and NPS regional offices). Applications must also include written assurance from the State that the district nomination is being revised to expand its significance or, for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand its significance. Owners should understand that confirmation of intent to nominate by a State does not constitute listing in the National Register, nor does it constitute a certification of significance as required by law for Federal tax incentives. Owners should further understand that they are proceeding at their own risk. In the event that: The building or district is not listed in the National Register for procedural, substantive or other reasons; district documentation is not formally amended; or the significance of the building has been lost as a result of alterations or damage, final certifications will not be issued. The SHPO for National Register districts and the duly authorized representative in the case of certified districts must submit documentation and have it approved by the NPS to amend the National Register

nomination or certified district before the preliminary certification of significance can become final.

(f) For purposes of the other rehabilitation tax credits under section 48(g) of the Internal Revenue Code, buildings within registered historic districts are presumed to contribute to the significance of such districts unless certified as nonsignificant by the Secretary. Owners of nonhistoric buildings within registered historic districts, therefore, must obtain certification of nonsignificance in order to qualify for those investment tax credits. If an owner begins or completes a substantial alteration (within the meaning of Sec. 167(n) of the Internal Revenue Code) of a building in a registered historic district without knowledge of requirements for certification of nonsignificance, he or she may request certification that the building was not of historic significance to the district prior to substantial alteration in the same manner as stated in § 67.4(c). The owner should be aware, however, of the requirements under section 48(g) of the Internal Revenue Code that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such substantial alteration, he or she in good faith was not aware of the certification requirement by the Secretary of the Interior.

(g) If a building is to be moved as part of a rehabilitation for which certification is sought, the owner must follow different procedures depending on whether the building is individually listed in the National Register or is within a registered historic district. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment. Moving a building may result in delisting of a National Register building or, for buildings within a registered historic district, denial or revocation of a certification of significance; consequently, a moved building may, in certain circumstances, be ineligible for rehabilitation certification.

(1) Documentation must be submitted that demonstrates: (i) The effect of the move on the building's integrity and appearance (any proposeed demolition, proposed changes in foundations, etc.); (ii) photographs of the site and general environment of the proposed site; (iii) evidence that the proposed site does not possess historical significance that would be adversely affected by the moved building; (iv) the effect of the move on the distinctive historical and visual character of the district, where applicable; and (v) the method be used for moving the building.

(2) For buildings individually listed in the National Register, the procedures contained in 36 CFR Part 60 must be followed prior to the move, or the building will be removed from the National Register, will not be considered a certified historic structure, and will have to be renominated for listing. The owner may submit a Part 1 in order to receive a preliminary determination from the NPS of whether a move will cause the property to be delisted. However, preliminary approval of such a Part 1 does not satisfy the requirements of 36 CFR Part 60. The SHPO must follow the remaining procedures in that regulation so that the NPS can determine that the moved building will remain listed in the National Register and retain its status as a certified historic structure.

(3) If an owner moves (or proposes to move) a building into a registered historic district or moves (or proposes to move) a building elsewhere within a registered historic district, a Part 1 containing the required information described in subparagraph (1) above must be submitted. The building to be moved will be evaluated to determine if it contributes to the historic significance of the district both before and after the move as in § 67.4(h).

(h) Buildings within registered historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the Secretary's Standards for Evaluating Significance within Registered Historic Districts as set forth in § 67.5.

(i) Once the significance of a building located within a registered historic district or a potential historic district has been determined by the Secretary, written notification will be sent to the owner and the SHPO in the form of a certification or significance or nonsignificance.

§ 67.5 Standards for Evaluating Significance within Registered Historic Districts.

(a) Buildings located within registered historic districts are reviewed by the Secretary to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within Registered Historic Districts.

(1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(b) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of nonsignificance for loss of integrity. In certain cases it may be necessary for the owner to submit a structural engineer's report to help substantiate physical deterioration and/or structural damage.

(c) Certifications of significance and nonsignificance are made on the basis of the application documentation and existing National Register documentation. Statements of significance of particular buildings as generally contained in National Register documentation are not conclusive for purposes of this part and are not to be relied upon by an owner in light of the additional specific information required in applications for certifications of significance or nonsignificance. In the event that a certification request is received for a building which is outside a district's established period or area of significance, a preliminary determination of significance will only be issued if the request includes adequate documentation to support the revision and if there is written assurance from the SHPO that the district nomination in question is being revised to expand its significance or for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand the significance. Final certifications will be issued when the district documentation is officially amended unless the significance of the building has been lost as a result of alteration or damage. For procedures on amending listings to the National Register, consult the appropriate SHPO or NPS regional office.

(d) Where rehabilitation credits are sought, certifications of significance will be made on the appearance and

condition of the building before rehabilitation was begun.

(e) In cases where a nonhistoric surface material obscures a facade, it may be necessary for the owner to remove a portion of the surface material prior to requesting certifications so that a determination of significance can be made. If the obscured facade has substantially retained historic integrity, and the building otherwise is considered contributing to the historic district, the building will be determined a certified historic structure upon removal of the obscuring surface material; and will be considered as of historic significance to the district, if otherwise qualified, even with the obscuring material intact for purposes of the determinations described in § 67.4(a)(2) hereof.

(f) Additional guidance on certifications of historic significance is available from SHPOs and NPS regional offices.

§ 67.6 Certifications of rehabilitation.

(a) Owners who want rehabilitation projects for certified historic structures to be certified by the Secretary as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as a certified rehabilitation, shall comply with the procedures listed below. A fee, as described in § 67.11, for reviewing all proposed, ongoing, or completed rehabilitation work is charged by the Secretary. Final action will not be taken on any application until the appropriate remittance is received.

(1) to initiate review of a rehabilitation project for certification purposes, an owner must complete Part 2 of the Historic Preservation Certification Application according to instructions accompanying the application. These instructions explain in detail the documentation required for certification of a rehabilitation project. The application may describe a proposed rehabilitation project, a project in progress, or a completed project. In all cases, documentation, including photographs adequate to document the appearance of the building(s), both on the exterior and on the interior, and its site and environment prior to rehabilitation must accompany the application. The social security or taxpayer identification number(s) of all owners must be provided in the application. Other documentation, such as window surveys or cleaning specifications, may be required by reviewing officials to evaluate certain rehabilitation projects. Plans for any attached, adjacent, or related new construction must also accompany the application. Where necessary documentation is not provided, review and evaluation may not be completed. Owners are encouraged to submit Part 2 of the application prior to undertaking any rehabilitation work. Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects. Owners who undertake rehabilitation projects without prior approval from the Secretary do so at their own risk.

(2) A project does not become a certified rehabilitation until it is completed and so designated by the NPS. A determination that the completed rehabilitation of a building not yet designated a certified historic structure meets the Secretary's Standards for Rehabilitation does not constitute a certification of rehabilitation. When requesting certification of a completed rehabilitation project, the owner shall submit a Request for Certification of Completed Work (NPS Form 10–168c) and provide the project completion date and a signed statement that the completed rehabilitation project meets the Secretary's Standards for Rehabilitation and is consistent with the work described in Part 2 of the Historic Preservation Certification Application. Also required in requesting certification of a completed rehabilitation project are costs attributed to the rehabilitation, photographs adequate to document the completed rehabilitation, and the social security or taxpayer identification number(s) of all owners.

(b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment, as determined by the Secretary, and related demolition, construction or rehabilitation work which may affect the historic qualities, integrity or site and environment of the certified historic structure(s). More specific considerations in this regard are as follows:

(1) All elements of the rehabilitation project must meet the Secretary's ten Standards for Rehabilitation (§ 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted. In general, an owner undertaking a rehabilitation project will not be held responsible for rehabilitation work undertaken by previous owners or third parties. However, if the Secretary considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project undertaken by the owner, or beneficial owner, the Secretary may choose to deny a rehabilitation certification or to withhold a decision on such a certification until such time as the Internal Revenue Service, through a private letter ruling, has determined, pursuant to these regulations and applicable provisions of the Internal Revenue Code and income tax regulations, the proper scope of the rehabilitation project to be reviewed by the Secretary. Factors to be taken into account by the Secretary and the Internal Revenue Service in this regard include, but are not limited to, the facts and circumstances of each application and whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and whether property conveyances, reconfigurations, ostensible ownership transfers of other transactions were transactions which purportedly limit the scope of a rehabilitation project the purpose of review by the Secretary without substantially altering beneficial ownership or control of the propery. The fact that a building may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction or demolition work does not preclude the Secretary or the Internal Revenue Service from determining that such inappropriate work is part of the rehabilitation project to be reviewed by the Secretary.

(2) Conformance to the Standards will be determined by evaluating the building as it existed prior to the commencement of the rehabilitation project, regardless of when the building becomes or became a certified historic structure.

(3) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation certification will be issued on the merits of the overall projects rather than an individual components. For rehabilitation projects where there is no historical functional relationship among the structures, the certification decision will be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes.

(4) Demolition of a building as part of a rehabilitation project involving multiple buildings may result in denial of certification of the rehabilitation. In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction which physically expands one certified historic structure undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure will generally result in denial of certification of the rehabilitation unless a determination has been made that the building to be demolished is not a certified historic structure as in § 67.4(a). In rehabilitation projects where the structures have been determined to be functionally related historically, demolition may be approved, in limited circumstances, when (i) the component is outside the period of significance of the property, or (ii) the component is so deteriorated or altered that its integrity has been irretrievably lost; or (iii) the component is a secondary structure or feature, generally one that lacks special historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is presented to show that retention of the component is not technically or economically feasible.

(5) In situations involving rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and make a certification decision accordingly. A rehabilitation which is not consistent with the historic character of a structure which contributes to the significance of a historic district concomitantly is not consistent with the historic character of the district.

(6) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion, but there is or was a larger related rehabilitation project(s) occurring with respect to the certified historic structure, the Secretary's decision on the requested certification will be based on review of the overall rehabilitation project(s) for the certified historic structure.

(7) For rehabilitation projects which are to be completed in phases over the alternate 60-month period allowed in section 48(g) of the Internal Revenue Code, the number and order of the phases must be identified in Part 2 of the application and in the supporting architectural plans and specifications. Generally, separate certifications for portions of phased rehabilitation projects will not be issued. Rather the owner will be directed to comply with Internal Revenue Service regulations governing late certifications contained in 26 CFR 1.48–12.

(c) Upon receipt of the complete application describing the rehabilitation project, the Secretary shall determine if the project is consistent with the Standards for Rehabilitation. If the project does not meet the Standards for Rehabilitation, the owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such Standards. For additional procedures regarding rehabilitation projects determined not to meet the Standards for Rehabilitation, see § 67.6(f).

(d) Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application must be brought promptly to the attention of the Secretary by written statement through the SHPO to ensure continued conformance to the Standards; such changes should be made using a Historic Preservation Certification Application Continuation/Amendment Sheet (NPS Form 10–168b). The Secretary will notify the owner and the SHPO in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by an authorized representative of the Secretary to determine if the work meets the Standards for Rehabilitation. The Secretary reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook further unapproved alterations inconsistent with the Secretary's Standards for Rehabilitation. The tax consequences of a revocation of certification will be determined by the Secretary of the Treasury.

(f) If a proposed, ongoing, or completed rehabilitation project does not meet the Standards for Rehabilitation, an explanatory letter will be sent to the owner with a copy to the SHPO. A rehabilitation building not in conformance with the Standards for Rehabilitation and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the National Register in accord with Department of the Interior regulations 36 CFR Part 60. Similarly, if a building has lost those qualities which caused it to be designated a certified historic structure, it will be certified as noncontributing (see §§ 67.4 and 67.5). In either case, the delisting or certification of nonsignificance is considered effective as of the date of issue and is not considered to be retroactive. In these situations, the Internal Revenue Service will be notified of the substantial alternations. The tax consequences of a denial of certification will be determined by the Secretary of the Treasury.

§ 67.7 Standards for rehabilitation.

(a) The following Standards for Rehabilitation are the criteria used to determine if a rehabilitation project of a certified historic structure qualifies as a certified rehabilitation. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy. They apply to the exterior and the interior of historic buildings, as well as to attached, adjacent, or related new construction, and also encompass the historic building's site and environment. The Standards are applied to each rehabilitation project taking into consideration economic and technical feasibility; however, to be certified, the rehabilitation project must be determined to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

(1) Every effort shall be made to use a property for its historic purpose or to provide a compatible new use that requires minimal change to the building, site, and environment.

(2) The historic qualities of a property shall be retained and preserved. The removal of distinguishing historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false historical appearance shall not be undertaken.

(4) Changes that have taken place in the course of time are important evidence of the development of the property. Those changes that have acquired historical significance in their

own right shall be retained and preserved.

(5) Historic materials, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be retained and preserved.

(6) Distinctive features shall be retained and repaired rather than replaced. Where the severity of deterioration requires removal of the feature, the replacement shall match in design, color, texture and other visual qualities; and, where possible, material. Replacement of missing features shall be substantiated by historical, physical, or pictorial evidence. Conjectural features or architectural elements from other buildings shall not be utilized.

(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic building materials shall not be used. The surface cleaning of structures, when appropriate, shall be undertaken using the gentlest means possible.

(8) Every effort shall be made to preserve in place those archeological components which are integral to the significance of the property. If a significant archeological component must be disturbed, mitigation measures shall be undertaken.

(9) New additions or related new construction shall not destroy distinguishing materials or the character of the property and its environment; shall be compatible with the size, scale, color, and material of the historic building, its site, and its environment; and shall provide a visual distinction between old and new.

(10) New additions or related new construction shall be done in such a manner that if removed in the future, the essential form and integrity of the historic building, its site, and its environment would be unimpaired.

(b) Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treaments include, but are not limited to: improper repointing techniques; improper exterior masonry cleaning methods; and the introduction of insulation into cavity walls of historic woodframe buildings where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in denial of certification. Similarly, exterior additions that duplicate the form, material, style, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial of certification. For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. These Guidelines, "Preservation Briefs" and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the appropriate SHPO or NPS regional office. Owners are responsible for procuring this material as part of proper planning for a certified rehabilitation.

(c) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme intervention as part of a certified rehabilitation if: The necessity for dismantling is justified in supporting documentation; significant architectural features and overall design are retained; and adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. Section 48(g) of the Internal Revenue Code of 1986 exempts certified historic structures from meeting the physical test for retention of external walls and internal structural framework specified therein for other rehabilitated buildings. Nevertheless, owners are cautioned that the Standards for Rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, *i.e.*, external walls that detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the Standards for Rehabilitation.

(d) Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the building and, where applicable, the district in which it is located.

(e) The qualities of a building and its site and environment which qualify it as a certified historic structure are determined by the Secretary, taking into account all available information, including information derived from the physical and architectural attributes of the building; such determinations are not limited to information contained in National Register or related documentation.

§ 67.8 Certifications of statutes.

(a) State or local statutes which will be certified by the Secretary. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any by-laws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district. To be certified by the Secretary, the statute generally must provide for a duly designated review body, such as a review board or commission, with power to review proposed alterations to structures of historic significance within the boundaries of the district or districts designated under the statute except those owned by the State.

(b) When the certification of State statutes will have an impact on districts in specific localities, the Secretary encourages State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute.

(c) State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purposes of the State law. Adequate State statutes which designate specific historic districts and do not require specific implementing local statutes will be certified. If the State enabling legislation contains provisions which do not meet the intent of the law, local statutes designated under the authority of the enabling legislation will not be certified. When State enabling legislation exists, it must be certified before any local statutes enacted under its authority can be certified.

(d) Who may apply. Requests for certification of State or local statutes may be made only by the Chief Elected Official of the government which enacted the statute or his or her authorized representative. The applicant shall certify in writing that he or she is authorized by the appropriate State or local governing body to apply for certification.

(e) Statute certification process. Requests for cerification of State or local statutes shall be made as follows:

(1) The request shall be made in writing from the duly authorized representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification of significance in a district unless another responsible person is indicated including his or her address and telephone number. The request shall also include a copy of the statute(s) for which certification is requested, including any by-laws or ordinances that contain information necessary for the certification of the statute. Local governments shall also submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(2) Requests shall be sent to the SHPO in participating States and directly to appropriate NPS regional office in nonparticipating States.

(3) The Secretary shall review the statute(s) and assess whether the statute(s) and any by-laws or ordinances that contain information necessary for the certification of the statute contain criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district(s) based upon the standards set out above in § 67.8(a). The State shall be given a 30-day opportunity to comment upon the request. State comments received within this time period will be considered by the Secretary in the review process. If the statute(s) contain such provisions and if this and other provisions in the statute will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the Secretary will certify the statute(s).

(4) The Secretary generally provides written notification within 30 days of receipt by the NPS to the duly authorized representative and to the SHPO when certification of the statute is given or denied. If certification is denied, the notification will provide an explanation of the reason(s) for such denial.

(f) Amendment or repeal of statute(s). State or local governments, as appropriate, must notify the Secretary in the event that certified statutes are repealed, whereupon the certification of the statute (and any districts designated thereunder) will be withdrawn by the Secretary. If a certified statute is amended, the duly authorized representative shall submit the amendment(s) to the Secretary, with a copy to the State, for review in accordance with the procedures outlined above. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative and the SHPO within 60 days of receipt.

(g) The Secretary may withdraw certification of a statute (and any districts designated thereunder) on his own initiative if it is repeal or amended to be inconsistent with certification requirements after providing the duly authorized representative and the SHPO 30 days in which to comment prior to the withdrawal of certification.

§ 67.9 Certifications of state or local historic districts.

(a) The particular State or local historic district must also be certified by the Secretary as substantially meeting National Register criteria, thereby qualifying it as a registered historic district, before the Secretary will process requests for certification of individual buildings within a district or districts established under a ceritified statute.

(b) The provision described herein will not apply to buildings within a State or local district until the district has been certified, even if the statute creating the district has been certified by the Secretary.

(c) The Secretary considers the duly authorized representative requesting certification of a statute to be the official responsible for submitting district documentation for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address, and telephone number. The Secretary considers the authorizing statement of the duly authorized representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated.

(d) Requests shall be sent to the SHPO in participating States and directly to the appropriate NPS regional office in nonparticipating States. The State shall be given a 30-day opportunity to comment upon an adequately documented request. State comments received within this time period will be considered by the Secretary in the review process. The guidelines in National Register Bulletin 16, "Guidelines for Completing National Register of Historic Places Forms," provide information on how to document historic districts for the National Register. Each request should include the following documentation:

(1) A description of the general physical or historical qualities which make this a district; and explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of buildings in the district.

(2) A concise statement of why the district has significance, including an explanation of the areas and periods of significance, and why it meets National Register criteria for listing (see 36 CFR Part 60); the relevant criteria should be identified (A, B, C, and D).

(3) A definition of what types of buildings contribute and do not contribute to the significance of the district as well as an estimate of the percentage of buildings within the district that do not contribute to its significance.

(4) A map showing all district buildings with, if possible, identification of contributing and noncontributing buildings; the map should clearly show the district's boundaries.

(5) Photographs of typical areas in the district as well as major types of contributing and noncontributing buildings; all photographs should be keyed to the map.

(e) Districts designated by certified State or local statutes shall be evaluated using the National Register criteria (36 CFR Part 60) within 30 days of the receipt of the required documentation by the Secretary. Written notification of the Secretary's decision will be sent to the duly authorized representative or to the person designated as responsible for the district documentation.

(f) Certification of statutes and districts does not constitute certification of significance of individual buildings within the district or of rehabilitation projects by the Secretary.

(g) Districts certified by the Secretary as substantially meeting the requirements for listing will be determined eligible for listing in the National Register at the time of certification and will be published as such in the **Federal Register**.

(h) Documentation on additional districts designated under a State or local statute that has been certified by the Secretary should be submitted to the Secretary for certification following the same procedures and including the same information outlined in the section above.

(i) State or local governments, as appropriate, shall notify the Secretary if a certified district designation is amended (including boundary changes) or repealed. If a certified district designation is amended, the duly authorized representative shall submit documentation describing the change(s) and, if the district has been increased in size, information on the new areas as outlined in § 67.9. A revised statement of significance for the district as a whole shall also be included to reflect any changes in overall significance as a result of the addition or deletion of areas. Review procedures shall follow those outlined in §§ 67.9 (d) and (e). The Secretary will withdraw certification or inappropriately amended certified district designations, thereby disqualifying them as registered historic districts.

(j) The Secretary may withdraw Secretary of a district on his own initiative if it ceases to meet the National Register Criteria for Evaluation after providing the duly authorized representative and the SHPO 30 days in which to comment prior to withdrawal of certification.

(k) The Secretary urges State and local review boards or commissions to become familiar with the Standards used by the Secretary of the Interior for cerifying the rehabilitation of historic buildings and to consider their adoption for local design review.

§ 67.10 Appeals.

(a) An appeal by the owner, duly authorized representative as appropriate, may be made from any of the certifications or denials of certification made pursuant to this part or any decisions made pursuant to § 67.6(f). Such appeals must be in writing and received by the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal but all information the owner wishes the Chief Appeals Officer to consider must be submitted in writing. The SHPO will be notified that an appeal is pending. The Chief Appeals Officer will review the record of the decision in question, including any further written submissions by the owner, and shall provide the appellant a written decision as promptly as circumstances permit. Such appeals constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) The denial of a preliminary determination of significance for an individual building may not be appealed by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR Part 60). Similarly, the denial of preliminary certification for a rehabilitation project for a building that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. Administrative reviews in these circumstances may be performed at the discretion of the Chief Appeals Officer. The decision to undertake an administrative review will be made on a case-by-case basis, depending on particular facts and circumstances and the Chief Appeals Officer's schedule, the expected date for nomination, and the nature of the rehabilitation project (proposed, ongoing, or completed). Administrative reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the building in the National Register.

(c) In considering such appeals or administrative reviews, the Chief Appeals Officer shall consider: Alleged errors in professional judgment; alleged prejudicial procedural errors; and any additional written information provided. The Chief Appeals Officer's decision may: Reverse the appealed decision; affirm the appealed decision: resubmit the matter to the appropriate Regional Director for further consideration; or where appropriate, withhold a decision until issuance of a ruling from the Internal Revenue Service pursuant to § 67.6(b)(1). The Chief Appeals Officer may posit his decision in whole or in part on matters or factors not discussed in the decision appealed from. The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the Standards set forth herein or he considers that prejudicial procedural error by a Federal official legally compels issuance of the requested certification.

(d) The decision of the Chief Appeals Officer shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Chief Appeals Officer has issued a final administrative decision pursuant to this section.

§ 67.11 Fees for processing rehabilitation certification requests.

(a) Fees are charged for reviewing rehabilitation certification requests in accordance with the schedule below.

(b) Payment shall not be made until requested by the NPS regional office according to instructions accompanying the Historic Preservation Certification Application. All checks shall be made payable to: NATIONAL PARK SERVICE. Final action will not be taken on an application until the appropriate remittance is received. Fees are nonrefundable.

(c) The fee for review of proposed or ongoing rehabilitation projects for projects over $20,000 is $250. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work (NPS Form 10–168c), as follows:

Fee	Size of rehabilitation
500	$20,000 to $99,999.
$800	$100,000 to $499,999.
$1,500	$500,000 to $999,999.
$2,500	$1,000,000 or more.

If review of a proposed or ongoing rehabilitation project had been undertaken by the Secretary prior to submission of a Request for Certification of Completed Work, the initial fee of $250 will be deducted from these fees. No fee will be charged for rehabilitations under $20,000.

(d) In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

(1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, the fee for preliminary review is $250 and the fee for final review is computed on the basis of the total rehabilitation costs.

(2) In the case of multiple building projects where there is no historic functional relationship among the structures and which are under the same ownership; are located in the same historic district; are adjacent or contiguous; are of the same architectural

type (*e.g.*, rowhouses, loft buildings, commercial buildings); and are submitted for review at the same time, the fee for preliminary review is $250 per structure to a maximum of $2,500 and the fee for final review is computed on the basis of the total rehabilitation costs of the entire multiple building project to a maximum of $2,500. If the $2,500 maximum fee was paid at the time of review of the proposed or ongoing rehabilitation project, no further fee will be charged for review of a Request for Certification of Completed Work.

[FR Doc. 88-11355 Filed 5-20-88; 8:45 am]
BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 78-309; FCC 88-127]

Broadcast Television; Concerning Network Representation of TV Stations in National Spot Sales

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The *Further Notice of Proposed Rule Making (Further Notice)* seeks comment with respect to possible changes in the television network representation rule. This rule prohibits television stations, other than those owned and operated by a television network, from being represented by their network in the non-network, or spot, sales market. This proceeding began in 1978, when the Commission granted a temporary waiver of the rule to the Spanish International Network, now known as Univision, and opened a proceeding soliciting comment with respect to whether emerging networks generally should be exempted from the rule. The *Further Notice* seeks to update the record in this proceeding in light of recent developments and requests comment on additional options in this matter.

DATES: Comments due July 25, 1988; replies due August 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making* in BC Docket No. 78-309, adopted March 24, 1988, and released May 12, 1988, FCC 88-127. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decisions may also be purchased from the Commission's copy contractor, International Transportation Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. This proceeding was commenced in 1978 to explore possible changes in the Commission's television network representation rule § 73.658(i). This rule prohibits television stations, other than those owned and operated by a television network, from being represented by their network in the non-network, or spot, sales market. The proceeding was initiated when the Commission granted a temporary waiver of the rule to Univision, and opened a proceeding soliciting comment with respect to whether emerging networks generally should be exempted from the rule. Univision has been operating under this waiver since 1978, and similar waivers recently have been granted to other emerging networks

2. The network representation rule was promulgated in 1959 to restrain the market power of TV networks with respect to the advertising market. It applies to all entities delivering programming to television stations on a simultaneous interconnected basis. During the ten years that have passed since this proceeding was first initiated, the rule and the Univision waiver have been analyzed by the Commission's staff and have been addressed in Commission adjudicatory proceedings. The implications of these developments in terms of the TV network representation rule and the Univision waiver have not been subject to general comment in the context of this proceeding.

3. This *Further Notice* seeks to update the record in this proceeding in light of the more recent developments relating to this rule and requests comment on additional options in this matter. The *Further Notice* addresses the full range of policy options, which consist of three basic alternatives. The first is to modify the rule so that emerging networks are explicitly exempted from the scope of the network representation rule. In this respect, we solicit comment with respect to whether the rule should be applied only to the traditional broadcast television networks and the appropriate manner in which to define such networks. The second option is to eliminate the network representation rule in its entirety. In this regard, we solicit comment on whether any broadcast television network can, in today's media environment, adversely affect competition in the television advertising market to such an extent as to warrant the continued imposition of the network representation rule. The third option is to retain the rule in its present form. We solicit comment with respect to an appropriate waiver policy if we were to retain the rule.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding seeks comment with respect to possible revisions to the television network representation rule. If the Commission were to modify the network representation rule, more efficient business operations would likely ensue. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. This proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements of burdens on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 25, 1988; and reply comments on or before August 24, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc 88-11520 Filed 5-20-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-192, RM-5928; RM-6262]

Radio Broadcasting Services; Oroville and Monte Rio, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed,

mutually-exclusive proposals seeking the allotment of Channel 249. The first, filed by Oroville Radio, Inc., licensee of Station KEWE(FM) (Channel 249A), Oroville, California, seeks the substitution of FM Channel 249B for Channel 249A and modification of its Class A license accordingly, to provide that community with its first wide coverage area FM service. The second petition, filed by Southcom, Inc., licensee of Station KMGG(FM) (Channel 249A), Monte Rio, California, seeks the substitution of Channel 249B1 for Channel 249A and the concomitant modification of its license, to provide a first expanded coverage FM service to that community. In order to utilize its present site, Southcom's proposal also seeks to substitute another Class A channel for Channel 249A at Fort Bragg, California, for which a construction permit has been issued to Station KSAY(FM).

DATES: Comments must be filed on or before July 1, 1988, and reply comments on or before July 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, 1920 N St. NW., Wash., DC 20036 (Oroville Radio, Inc.); and John Joseph McVeigh, Esq., Fisher, Wayland, Cooper & Leader, 1255– 23d St. NW., Suite 800, Wash., DC 20037 (Southcom, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–192, adopted April 6, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11521 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–193, RM–6158]

Radio Broadcasting Services; Philadelphia, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Quail Communications, proposing the allocation of FM Channel 281A to Philadelphia, Mississippi, as that community's second FM broadcast service. The coordinates used for this proposal are 32–46–18 and 89–06–48.

DATES: Comments must be filed on or before July 1, 1988, and reply comments on or before July 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Mike Partridge, Quail Communications, P.O. Box 5314, Meridian, Mississippi 39302

Larry G. Fuss, Contemporary Communications, P.O. Box 3340, Meridian, Mississippi 39303 (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–193, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11522 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement on Profit Policy for Nonprofit Organizations; Withdrawal of Proposed Rule

AGENCY: Department of Defense (DoD).

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The proposed rule published in 53 FR 625; January 11, 1988, concerning proposed changes to DFARS 215.972 regarding nonprofit organizations has been withdrawn by decision of the Defense Acquisition Regulatory (DAR) Council. Based upon a review of public comments received and reconsideration by the DAR Council, no change to the current rules at DFARS 215.972 is deemed necessary. Therefore, the proposed rule is withdrawn and DAR Case 87–121 is closed. This notice is for information purposes only; no further comments on this action are solicited.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88–11451 Filed 5–20–88; 8:45 am]

BILLING CODE 3810–01–M

48 CFR Part 225

Department of Defense Federal Acquisition Regulation Supplement on Foreign Acquisition; Withdrawal of Proposed Rule

AGENCY: Department of Defense (DoD).

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The proposed rule published in 52 FR 12440; April 16, 1987, concerning proposed changes to DFARS 225.105(S–75) to clarify application of the DoD Balance of Payments Program evaluation factor on direct purchases in support of civil works projects has been withdrawn by decision of the Defense Acquisition Regulatory Council. Based upon a review of public comments received and reconsideration by the agency submitting the case, no change to the current rules at DFARS 225.105 (S–71) and (S–75) is deemed necessary. Therefore, the proposed rule is withdrawn and DAR Case 86–144 is closed. This notice is for information purposes only. No further comments on this action are solicited.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88–11450 Filed 5–20–88; 8:45 am]

BILLING CODE 3810–01–M

48 CFR Parts 225, 227, 234, 235, 242, 252 and 271

Department of Defense Federal Acquisition Regulation Supplement; Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: To implement DoD Directive 2140.2, the Department of Defense is proposing the following changes to the DoD FAR Supplement. A new Part 271 is added; section 225.7306, "Recovery of Nonrecurring Costs" is merged into Part 271; subsection 227.403–3 is revised, section 235.71 is deleted and merged into Part 271 and the clause at 252.235–7002 is deleted in lieu of the new clause at 252.271–7001 which is added to reflect the policy and procedural changes in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology." Additionally section 242.302, "Contract Administration Functions" will be changed to complement Part 271. Subsection 234.005–71 will be modified to include the clause to recover nonrecurring costs on contracts for major systems acquisition.

DATE: Comments on the proposed revisions should be submitted in writing at the address shown below on or before July 22, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 86–17 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Melburn, Director for Accounting Policy, (202) 697–7296.

SUPPLEMENTARY INFORMATION:

A. Background

On August 5, 1985, DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Commercial Sales of Defense Products and Technology" was reissued. This directive modified DoD policy and procedures on establishing and collecting recoupment charges on commercial, foreign and domestic sales. To facilitate review of this proposed rule, DoD Directive 2140.2 is printed for information.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because they make only a small number of commercial sales of defense articles or technology to foreign or domestic customers. An Initial Regulatory Flexibility Analysis has been performed and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D in correspondence.

C. Paperwork Reduction Act Information

The proposed rule contains no new information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 et seq. The only new requirement is for the contracting officer to certify annually the amount of nonrecurring RDT&E and Production collections received on qualifying items. This is a standard requirement in support of payments to the U.S. Government.

List of Subjects in 48 CFR Parts 225, 227, 234, 235, 242, 252 and 271

Government procurement.

Charles W. Lloyd.

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 225, 227, 234, 235, 242, 252 and 271 as follows:

1. The authority citation for 48 CFR Parts 225, 227, 234, 235, 242, 252 and 271 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

225.7306 [Removed]

2. Section 225.7306 is removed in its entirety.

PART 227—PATENTS, DATA AND COPYRIGHTS

227.475–5 [Amended]

3. Section 227.475–5 is amended by adding to the end a sentence to read: "Transfer of DoD-owned technical data to foreign governments for any purpose will be made only under Foreign Military Sales procedures."

PART 234—MAJOR SYSTEM ACQUISITION

4. Section 234.005-71 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

234.005–71 Contract clauses for major systems acquisitions.

* * * * *

(b) The contract shall include the clause at 252.271–7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for use of DoD-owned Technical Data" as prescribed in 271.004(a).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.071 [Amended]

5. Section 235.071 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

Subpart 235.71—[Removed]

6. Subpart 235.71 is removed in its entirety.

PART 242—CONTRACT ADMINISTRATION

7. Section 242.302 is amended by removing paragraph (S–73), redesignating paragraph (S–74) as (S–73) and adding new paragraph (S–74) to read as follows:

242.302 Contract administration functions.

* * * * *

(S–74) For contracts where recoupment of nonrecurring costs and royalty fees are applicable (see 271.004), accept and transmit payment regarding a commercial sale.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.235–7002 [Removed]

8. Section 252.235–7002 is removed in its entirety.

9. Section 252.271–7001 is added to read as follows:

252.271–7001 Recovery of nonrecurring costs on commercial sales of defense products and technology and of royalty fees for use of DoD-owned technical data.

As prescribed in 271.004(a), insert the following clause:

Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD-Owned Technical Data (Date)

(a) *Definitions.* The terms used in this clause are defined in section 271.001 in the DoD FAR Supplement.

(b) The Contractor agrees to reimburse the U.S. Government for a fair share of the U.S. Government's investment in special RDT&E and nonrecurring production costs on domestic or foreign commercial sales of defense articles and technology subject to a recoupment charge. The fair share is determined by the DoD following procedures set forth in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology".

(1) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or to enter into license or technical assistance agreements for the technology developed under this contract, the Contractor shall:

(i) Determine if the DoD has a scheduled nonrecurring recoupment charge for the article or technology being sold or transferred.

(ii) Request the DoD Focal Point for a determination of charges which may be applicable to unscheduled defense articles and technology under the intended commercial sale. This request shall be made when the Contractor has a reasonable basis to believe DoD incurred $2 million or more in nonrecurring costs or that a recoupment charge based on special RDT&E and nonrecurring production costs is applicable to the intended commercial sale.

(iii) Provide the DoD Focal Point with commercial sales forecasts of articles and technology subject to a recoupment charge when required.

(iv) Notify the DoD Focal Point of all commercial sales (either foreign or domestic), that are subject to a recoupment charge. The notification will identify the product or technology being sold or licensed for production, the purchaser, the quantity sold, the applicable recoupment charges, the time frame for delivery, and the identification of the export license (Commercial or State) if sale is for export. The notification will be made when each agreement for sale of a defense article or technology is made.

(v) Pay the established recoupment charges to the Administrative Contracting Officer (or the DoD Focal Point in the event the contract is closed) within thirty (30) days following delivery to or acceptance of the item by a purchaser (whichever comes first).

(vi) Certify, on or before the sixtieth (60th) day following the end of each calendar year during which recoupment amounts were due, to the applicable Department of Defense Focal Point that proper notification to the U.S. Government of all commercial sales subject to this clause has been accomplished.

(End of clause)

10. A new Part 271, consisting of sections 271.000 through 271.006, is added to read as follows:

PART 271—RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES OF DEFENSE PRODUCTS AND TECHNOLOGY AND OF ROYALTY FEES FOR USE OF DOD-OWNED TECHNICAL DATA

Sec.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

271.000 Scope.

This part sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of nonrecurring costs and royalty fees on commercial sales by contractors of products, components, and related technology developed or produced with DoD appropriations or, in special cases, with Foreign Military Sales (FMS) customer funds. The policy applies to material, equipment, licenses, derivative items, computer software, and technical data. The objective of recovery is to ensure that a non-U.S. Government customer pays a fair share of the nonrecurring investment costs incurred by the Department of Defense or a foreign government.

271.001 Definitions.

"Derivative Item", as used in this part, means an item derived from a Defense item which consists of common parts equal to, or more than, 10 percent of the Defense item.

"Direct Sale", as used in this part, means a commercial sale to a non-U.S. Government customer, either foreign or domestic, by a defense contractor of products, technology, material, services, or development or production techniques that originally were developed, improved, or produced using DoD appropriations or funds.

"DoD Focal Points", (see section 271.006).

"Foreign Military Sale (FMS)", as used in this part, means a sale, by the DoD, of Defense articles or Defense services to a foreign government or international organization under authority of the Arms Export Control Act.

"License", as used in this part, means the legal right to use technical data with or without compensation and with or without restrictions.

"Nonrecurring Costs (NC)", as used in this part, include DoD costs as follows:

(a) The costs funded by Research, Development, Test, and Evaluation (RDT&E) appropriation to develop or improve the product or technology under consideration either through contract or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned.

(b) The costs funded by either procurement or operation and maintenance (O&M) appropriations in support of production. These are one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NC include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental

payments are made in accordance with the FAR or DoD FAR Supplement.

"Non-U.S. Contractor", as used in this part, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

"Pro Rata Recovery of Nonrecurring Costs", as used in this part, means equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD Component will collect from a consumer a fair (pro rata) share of the investment in the product being sold.

"Royalty Fee", as used in this part, means a charge that is assessed for the use of DoD-owned technical data for the purpose of manufacturing an item for a non-U.S. Government customer. The purpose of the charge is to recoup an appropriate share of the DoD NC incurred to develop the technical data and technology.

"Scheduled Nonrecurring Recoupment Charges", as used in this part, means charges published in a DoD Directive, Instruction, or Manual. Royalty fee percentages are published in DoD Directive 2140.2, "Recoupment of Nonrecurring Cost on Sales of U.S. Products and Technology." Unit charges on specific items of equipment are published in DoD 5105.38–M, "Security Assistance Management Manual," and DoD 7290.3–M, "FMS Financial Management Manual."

"Special RDT&E and Nonrecurring Production Costs", as used in this part, means costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

"Technology", as used in this part, means information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intanigible form, such as technical advice.

271.002 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and/or when technology is transferred to a foreign government, international organization, foreign commercial firm, or domestic organization (hereafter referred to collectively as "customers") for coproduction, assembly or licensed production for the same or derivative items. This fair share is recovered through the assessment of nonrecurring recoupment charges or royalty fees established by the DoD.

(b) In selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS cases where subsequent non-U.S. Government customers purchase the same specialized feature(s). The U.S. Government will normally not collect this recoupment on behalf of a foreign government beyond eight (8) years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

(c) Transfer of DoD-owned technical data to foreign governments for non-U.S. Government use shall be made only under FMS procedures.

271.003 Applicability.

(a) These policies apply to those products and technologies that were developed or produced with DoD appropriations or funds, and in special cases foreign customer funds, on which a nonrecurring recoupment charge or royalty fee has been or will be established.

(b) In the absence of an established recoupment amount, full recovery of the nonrecurring cost charge/royalty fee is required. It is incumbent upon the Contractor to notify the U.S. Government of all pending commercial sales that may be subject to a recoupment charge so that the appropriate charge may be established and identified to the contractor.

(c) Revised charges shall be effective as of the date of revision and shall not be retroactively applied to past sales or to sales consummated by a written contract between the parties before the effective date of the revised charge.

(d) The policies do not apply when the sale is to a U.S. Government organization or when a contract is awarded by DoD under the Foreign Military Sales program. When a sale is made under authority of the MFS program, charges prescribed by DoD Directive 2140.2 shall be assessed by the DoD official responsible for the presentation of the DD Form 1513. Such charges shall not be included in the contract price.

271.004 Procedures.

(a) To assure the recovery of an appropriate share of DoD investment in nonrecurring costs, the clause at 252.271–7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty fees Use of DoD-owned Technical Date," shall be included in all RDT&E and production contracts and subcontracts of $1 million or more. This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale or transfer of products or related technology, that meet the criteria of 271.003.

(b) The amount to be reimbursed to the U.S. Government for the commercial sale, coproduction or licensed production of products and components and for transfer of technology is provided at 252.271–7001. The recoupment charge is based upon information recorded in DoD accounting records or DoD budget justification documents and DoD estimates of quantities to be produced. The Military Department may consult with the Contractor to obtain contractor marketing assessments. The charge will be established by the DoD in accordance with DoD Directive 2140.2. If an issue concerning the amount cannot be resolved, the Military Department will, within 90 days, request guidance from the Director, Defense Security Assistance Agency.

(c) When a contractor negotiates the sale, coproduction or licensed production, or transfer of technology of a DoD developed item or a derivative of a DoD developed item, the Contractor will request the appropriate charge from the DoD Focal Point set forth in 271.006.

271.005 Waivers (including reductions).

(a) Waiver or reduction of the charges prescribed may be approved for a commercial sale based upon the same criteria for waivers granted under FMS or if the domestic sale is in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the U.S. Government.

(b) Request for waivers. (1) A waiver shall not be approved for a sale once consummated, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS program.

(2) Requests for waivers associated with foreign sales should originate with the foreign government and shall be submitted to the Director of the Defense Security Assistance Agency. The request shall contain information regarding the extent of standardization and a statement of facts regarding the program, benefits expected and other justification, and any calculations necessary to quantify the waiver and the benefits to the U.S. Government. Waivers will be evaluated on a case-by-case basis only, and blanket waivers will not be considered. Any waiver approved for a direct commercial sale to a foreign government requires a certification by the Contractor that reductions have been passed on to the customer. The Director of the Defense Security Assistance Agency is the only waiver approval authority.

(3) Requests for waivers associated with domestic sales may originate with a DoD Component, or a defense contractor (Vice President or higher) and shall be submitted to the Under Secretary of Defense for Acquisition (USD(A)). The request shall contain information regarding the dollar value of the waiver, benefit to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the U.S. Government balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests are discouraged, but may be granted in extraordinary circumstances.

271.006 Department of Defense (DoD) focal points.

DoD Focal Points maintain a central data base on established charges. The DoD Focal Points are as follows:

(a) *Army:* U.S. Army Security Affairs Command, ATTN: AMSAC–RP, 5001 Eisenhower Avenue, Alexandria, VA 22333–001.

(b) *Navy:* Commanding Officer, Navy International Logistics Control Office, 700 Robbins Avenue (Code 10), Philadelphia, PA 19111–5095.

(c) *Air Force:* Chief, Security Assistance & Training Cost Division, Directorate of Cost & Management Analysis, Department of the Air Force, Washington, DC 20330–5018.

DoD Directive 2140.2 set forth below is included to facilitate review of this proposed rule.

Department of Defense Directive

August 5, 1985.

Number 2140.2.

Subject: Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

References: (a) DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of USG Products and Technology," January 5, 1977 (hereby canceled).

(b) Public Law 90–629, "Arms Export Control Act," October 22, 1968, as amended.

(c) Council on International Economic Policy Decision Memorandum No. 23, "R&D Recoupment," August 2, 1974.

(d) Department of Defense Federal Acquisition Regulation (FAR) Supplement.

(e) Defense Acquisition Regulation (DAR).

(f) DoD 7290.3–M, "Foreign Military Sales Financial Management Manual," June 1981.

A. Reissuance and Purpose

This Directive reissues reference (a), establishes policy to conform with references (b) and (c) for calculating and assessing nonrecurring cost (NC) recoupment charges on sales of DoD-developed items and technology to non-U.S. Government (USG) customers, assigns responsibilities, and prescribes procedures to implement established policies.

B. Applicability and Scope

1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2. Its provisions shall be applied contractually to DoD contractors and recipients of DoD technical data packages (TDPs) who sell defense articles or technology developed with DoD appropriations or funds (and in special cases, customer funds) or use such technology to manufacture items sold commercially to a foreign government, international organization, foreign commercial firm, domestic organization, or private party.

3. Its provisions do not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

C. Definitions

The terms used in this Directive are defined in enclosure 1.

D. Policy

Non-USG purchaser shall pay a fair price, determined in accordance with this Directive, for the values of the DoD nonrecurring investment in the development and production of defense articles and/or development of technology, unless an NC recoupment charge waiver has been approved by the DoD official designated in section G. of this Directive. Approved revised NC recoupment charges shall not be applied retroactively to accepted Foreign Military Sales (FMS) agreements or to direct sales that were entered into before the date of approval of the revised NC recoupment charge. When defense items are sold at a reduced price due to age or condition, the NC recoupment charge shall be reduced by the same percentage reduction.

E. Responsibilities

1. The *Under Secretary of Defense for Research and Engineering* (USDR&E) shall monitor and exercise control over NC cost recoupment aspects of domestic commercial sales of DoD-developed items and technology and shall take apropriate action to revise the DoD FAR Supplement (reference (d)) to agree with this Directive.

2. The *Under Secretary of Defense for Policy* shall monitor the application of this Directive and exercise control over foreign sales of DoD-developed items and technology.

3. The *Under Secretary of Defense for Policy* shall monitor the application of this Directive and exercise control over foreign sales of DoD-developed items and technology.

3. The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) shall provide necessary cost accounting guidance and ensure publication of a listing of DoD-developed items or categories of technology to which NC recoupment charges are applicable.

4. The *Director, Defense Security Assistance Agency* (DSAA), shall serve as the DoD focal point for review and approval of NC recoupment charges for major defense equipment (MDE) items and for processing NC recoupment charge waiver requests received from foreign countries and international organizations for FMS or direct commercial sales. Notification of approved NC recoupment charges for MDE items shall be provided to the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)).

5. The *Heads of Military Departments and Defense Agencies* shall:

a. Determine the DoD nonrecurring investment in DoD-developed items or technology and perform required pro rata calculations in accordance with cost accounting guidance from the ASD(C).

b. Validate and provide recommended charges for MDE items to DSAA.

c. Determine the appropriate charges for non-MDE articles and technology.

d. Provide the approved non-MDE item and technology charges to the DASD(MS).

e. Insert prescribed reference (d) clauses in contracts.

f. Enforce the application of the aforementioned clauses.

g. Deposit collections to accounts prescribed by the ASD(C).

h. Submit quarterly reports of anticipated and actual NC recoupment charge collections to the DSAA.

6. The *Director, Defense Contract Audit Agency* (DCAA), shall ensure that any evaluation of a contractor accounting system includes an analysis of the internal controls established to ensure compliance with the requirement to pay NC recoupment charges. If DCAA audit work on a bid proposal, claim for incurred costs, etc., discloses contractor noncompliance with the requirement to pay an NC recoupment charge, an audit report shall be issued promptly to the cognizant DoD contracting officer, with a copy of the report submitted to the DASD(MS).

F. Procedures

All DoD Components shall follow the implementing procedures contained in enclosure 2.

G. Waivers (including Reductions)

1. The Arms Export Control Act (reference (b)) requires the recoupment of a proportionate amount of nonrecurring costs of MDE from FMS customers but authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance USG interests in North Atlantic Treaty Organization standardization or standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries. Waiver for direct commercial sales and for non-MDE items under FMS shall be based upon the same considerations.

2. Requests for waivers of NC recoupment charges for eligible countries for sales of DoD-developed items under the FMS program or on direct commercial sales to foreign governments and international organizations shall be submitted to the Director, DSAA.

a. Requests should originate with the foreign government and shall provide information regarding the extent of standardization to be derived as a result of the waiver and other benefits that would accrue to the USG as a result of the sale. The request shall contain a summary statement of the facts regarding the program, benefits expected and justification therefor, and any calculations necessary to quantify the waiver and the benefits to the USG.

b. Blanket waier requests shall not be submitted nor considered. The term "blanket waiver" refers to an NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

c. A waiver request shall not be approved for a sale that was accepted without an NC recoupment charge waiver, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS program. Any waiver approved for a direct commercial sale requires a certification by the contractor that reductions have been passed on to the customer.

3. A DoD Component or defense contractor (vice president or higher) may request waivers of NC recoupment charges for domestic sales of DoD-developed items. Contractor requests shall be submitted through the appropriate contracting officer to the USDR&E. To the extent possible, the request shall provide information regarding the dollar value of the waiver, benefit to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the USG balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests for domestic sales are discourged, but may be granted in extraordinary circumstances.

4. Requests for waivers shall be processed expeditiously, and a decision normally made by the approving authority (see subsection G.6., below) to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropraite DoD Component before issuance of the FMS agreement or signing of the commercial contract.

5. The decision on any waiver requires the concurrence of the Director, DSAA; the ASD(C); and the USDR&E. If an issue concerning the waiver request cannot be resolved, the normal waiver approval authority shall prepare an action memorandum on the waiver request to the Deputy Secretary of Defense for final determination. The action memorandum to the Deputy Secretary of Defense shall be coordinated with the Director, DSAA; the ASD(C); and the USDR&E.

6. The Director, DSAA, is the waiver approval authority and will state in writing any approvals granted for waivers associated with FMS and direct foreign sales. The USDR&E is the waiver approval authority and will state in writing any approvals granted for waivers involving sales of DoD-developed items and technology to domestic organizations. This authority shall not be redelegated. A notification of each approved waiver will be forwarded to the ASD(C) and to the concerned DoD Components by the approving authority.

H. Information Requirements

The record keeping and reporting requirements prescribed in subsection H.2. of enclosure 2 are assigned Reports Control Symbol DSAA(Q)1112.

I. Effective Date and Implementation

This Directive is effective immediately for all NC recoupment calculations that have not been approved previously. Forward two copies of implementing documents to the Assistant Secretary of Defense (Comptroller) within 120 days.

William H. Taft, IV,

Deputy Secretary of Defense.

Enclosures—5.

1. Definitions.
2. Implementing Procedures.
3. Format for MDE Calculation.
4. Recoupment of Nonrecurring Costs on Sales of MDE Items.
5. Recoupment of Nonrecurring Costs on Sales of Products and Technologies.

Aug. 5, 85
2140.2 (encl 1)

Definitions

1. *Cost Pool.* Represents the total cost to be distributed across the specific number of units. The nonrecurring research, development, test, and evaluation (RDT&E) cost pool comprises the costs described in definition 11. The nonrecurring production cost pool comprises costs described in definition 10.

2. *Direct Sale.* A commercial sale to a customer by a defense contractor of products, technology, materiel, services, and development of production techniques that originally were developed, improved, or produced using DOD appropriations or funds.

3. *Domestic Organization.* Any U.S. non-governmental organization or private commercial firm.

4. *Foreign Military Sale (FMS).* A sale of defense articles or defense services to a foreign government or international organization under authority of the Arms Export Control Act (reference (b)).

5. *Government Sale.* A sale of articles or services, or both, to customers by any DOD Component under appropriate statutes.

6. *Major Defense Equipment (MDE).* Any item of significant combat equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production of more than $200 million.

7. *Model.* A basic alpha-numeric designation within a weapon system series, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models within the same F–5 system series.

8. *Non-Major Defense Equipment (Non-MDE).* Any equipment or component that is not identified as major defense equipment.

9. *Non-U.S. Contractor.* A contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

10. *Nonrecurring Production Costs.* Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NCs include DOD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DOD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the DAR or DOD FAR Supplement (references (e) and (d), respectively) or asset use charges assessed in accordance with DOD 7290.3–M (reference (f)).

11. *Nonrecurring Research, Development, Test, and Evaluation (RDT&E) Costs.* These costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration either through contract or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance (O&M) appropriations.

12. *Pro Rata Recovery of Nonrecurring Costs (NC).* Equal distribution (proration) of a pool to a specific number of units that benefit from the investment so that a DOD Component will collect from a customer a fair (pro rata) share of the investment in the product being sold.

13. *"Special" RDT&E and Nonrecurring Production Costs.* Costs incurred at the request of, or for the benefit of, the customer in developing a special feature or unique requirement. These costs must be paid by the customer as they are incurred.

14. *Technology.* Information of any kind that can be used or adapted for use in the design, production, manufacture, utilization,

or reconstruction of articles or materiel. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

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Implementing Procedures

A. General

1. Each DoD Component, defense contractor, or recipient of DoD TDP negotiating the sale of items or technology, or both, developed with DoD appropriations or funds shall ensure the assessment of the charges as set forth in this implementing procedure.

2. Each DoD Component shall establish a system to accumulate cost pools, recognize when a cost pool meets recoupment thresholds and calculate an NC recoupment charge for items or technology releasable to foreign countries and international organizations when FMS or direct commercial sales are anticipated. The NC recoupment charge shall be based upon information recorded in DoD accounting records or DoD budget justification documents. Cost estimates may be used to determine the NC expected to be incurred in periods not covered by budget justification documents.

3. The NC recoupment charge computation (nonrecurring RDT&E and nonrecurring production cost pools divided by benefiting units) for the sale of MDE items shall be submitted to the Director, DSAA, for approval. The NC recoupment computation shall be supported with the MDE calculation worksheet illustrated at enclosure 3. A summary report on each MDE item shall be provided to DSAA following the format illustrated at enclosure 4. The Director, DSAA, will review each DoD Component's calculations and provide approved NC recoupment charges for MDE items to the DoD Component and the DASD (MS).

4. Once the approved charge has been used in an authorized sale, the charge normally will not be revised until a model change occurs or a major new development program occurs that changes the operational capability of the end item.

a. Each DoD Component shall review approved MDE charges annually to determine if there has been significant change in factors or assumptions used to compute the NC recoupment charge established for a model (for example a significant change in identifiable RDT&E costs or the anticipated production run). A significant change occurs when (1) a new calculation shows a change of 30 percent of the current system NC charge for an MDE Item or (2) the NC unit charge increases or decreases by $50,000 or more or (3) where the potential for a $5 million change in recoupment exists or (4) for ammunition items, the potential exists for additional recoupment of over $100,000 or more.

b. When significant changes are identified for MDE and/or when a model change occurs, the DoD Component shall submit a request to the Director, DSAA, for consideration of appropriate changes in future NC recoupment charges. The Director, DSAA, normally shall respond to the request in writing within 60 days after receipt of the request.

5. When a defense contractor negotiates the direct sale of a DoD-developed item or technology, or a derivative of a USG-developed item, he or she shall request the amount of the NC recoupment charge from the Administrative Contracting Officer (ACO) or (for technology sales) the technology charge from the DoD Component responsible for DoD acquisition of the article.

a. When making this request, the contractor shall submit such information as may be necessary to comply with this Directive. If the NC recoupment charge has not been established already, as provided for under this Directive, the ACO shall contact the DoD Component responsible for establishment of the charge and advise the contractor of the estimated date the charge will be made available.

b. Despite the absence of an established charge, the contract shall provide for full recovery of such charge in the amount that is subsequently established. The recovery will be for the total items sold and not merely applied on a prospective basis from the date the charge is established.

6. All DoD contracts for RDT&E or acquisition shall include a mandatory clause that requires the contractor to pay the USG, within 30 days following delivery of each item from the contractor's facility or purchaser's acceptance (whichever comes first), the established NC recoupment charge for any domestic or international direct sale, coproduction, or licensed production of DoD-developed items or technology (see DoD FAR Supplement 25.7306, 35.71, and 52.235–7002, reference (d)).

7. It is mandatory that each DoD Component complete and submit to DSAA for approval, a proposed NC charge not later than 60 days after award of a DoD contract for RDT&E or acquisition whenever there is a potential for commercial sale of an item (see subsection A.5., above). The ACO is responsible for initiating this action into appropriate Military Department channels and for notifying the contractor of the appropriate charge.

8. The cognizant DoD Component shall deposit collections in payment of an NC recoupment charge without delay in the nearest Federal Reserve Bank to accounts prescribed by the ASD(C). Notification of the deposit shall be provided to the DoD Component activity responsible for submission of reports required in subsection H of this enclosure.

B. Calculation of Charges on MDE and Components

MDE items are defined in enclosure 1. The determination of whether an item meets the MDE dollar threshold shall be based on obligations recorded to the date the equipment is offered for sale. Production costs shall include cost incurred for the Department of Defense, FMS, and known direct sales production. For the FMS program, the sales offer date shall be the date a Letter of Offer and Acceptance (LOA) is signed by a U.S. official and released to the FMS customer; for commercial sales, the sales offer date shall be the date of contract signature.

1. NC recoupment charges shall be assessed on a pro rata basis. The charges shall be established by dividing the total of all applicable NC costs including costs of in-house performance or multiple procurements incurred to date plus projections of future costs to be incurred by the total estimated number of units projected to be produced over the life of the system (including DoD requirements, Military Assistance Program (MAP) requirements, FMS requirements, and direct commercial sales requirements). The computation of the cost pool shall exclude costs for those items that are restricted to USG use only (for example, U.S.-unique nuclear devices, countermeasures, security devices, and aircraft carrier-unique adaptations). All applicable NC efforts including inhouse or multiple contractors shall be included in the NC cost pool. In other words, the source of NC effort to develop a product is not relevant to the calculation of the NC recoupment charge.

2. The number of units to be produced for DoD shall be obtained from budget backup data. FMS quantity projections and direct commercial sales quantity projections shall be derived jointly as best estimates by the Military Department and DSAA. Defense contractors should be consulted in determining direct commercial sales quantities, if necessary. When disagreement on estimated FMS and direct commercial quantities and sales projections occur, the Director, DSAA, will make the final determination in coordination with the ASD(C) and the USDR&E.

3. For a weapon system that includes more than one component that meets the MDE threshold or contains a component that has application to several weapons systems or a commercial sale potential, hereinafter referred to as a major individual component, a "building block" approach (that is the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

a. Data must be accumulated for each major component when NC is identified in accounting records or budget documents. The sum of the various component NC recoupment charges and any remaining NC for the weapon system shall be applied to the sale of a complete system. Individual NC recoupment charges shall be applied to sales of individual components. The format by performing the required calculation is at enclosure 3.

b. When a model change occurs, the NC recoupment charge shall be recalculated. That portion of the NC which benefits only one model shall be allocated only to that model, i.e., old or new. That portion of the NC that benefits old and new models shall be prorated between cost pools related to the old and new model items. Commonality between old and new models may be determined either on the basis of the ratio of old model parts in the new item or on some other commonly acceptable basis for allocation of costs between the models, i.e., engineering analysis or technology analysis, as appropriate. Sample calculations are illustrated at enclosure (6).

c. DoD Components involved with a sale shall ensure that components are not

purchased separately for ultimate assembly as an end item in an attempt to circumvent this Directive.

4. The established NC recoupment charge shall be included in the FMS unit price or, for commercial sales, provided to the seller, and paid by the seller to the USG.

5. If a commercial item being sold is substantially different (less than 90 percent common) from the USG item for which the NC recoupment charge was developed, the charge shall be assessed based on the extent of commonality with the USG item. For example, if the commercial item is 25 percent common with the DoD item, then only 25 percent of the established NC recoupment charge for the DoD item shall be assessed. The DoD Component office with system engineering responsibility for the item shall be responsible for determining the degree of such commonality.

a. The cognizant DoD contract administrative office shall request DCAA to review contractor accounting records to ensure that the commercial item was not fully or partly funded by charges against DoD contracts.

b. The contract administration office shall provide its calculations and rationale to DSAA for review and approval. Upon receipt of the DSAA approval, the DoD Component shall notify the contractor in writing of the applicable derivative NC recoupment charge.

6. If records necessary to enable a pro rata NC calculation have been lost or destroyed for particular MDE items in which the USG has an NC investment, the DoD Component (Assistant Secretary or a designee) shall certify that the records have been lost or destroyed and shall determine a unit NC recoupment charge equal to 4 percent of the most recent USG contract price. The certification of lost or destroyed documents and recommended fixed charge per unit shall be forwarded to the Director, DSAA, for approval. The Director, DSAA, shall then establish a fixed unit NC recoupment charge for all subsequent sales.

C. Calculation of Charges on Non-Major Defense Equipment

NC recoupment charges on Non-MDE shall be established in accordance with procedures set forth in this subsection. Once established, the charge normally shall not be revised unless the item subsequently qualifies as an MDE item. When a non-MDE item becomes an MDE item, a new NC recoupment charge shall be established using MDE procedures. The DoD Components shall provide established charges for non-MDE to the DASD(MS) for publication in a document that is readily accessible by DoD Components, contractors, and the public.

1. *Components of MDE Items.* The pro rata amount, as determined through use of the building block approach, required by in subsection B.3, above, shall be assessed whenever a major component is sold. There shall be no charge on sales of other components because applicable NC recoupment charges are recovered on MDE item sales.

2. *Non-MDE End Items.* A percentage NC recoupment charge shall be assessed on non-MDE end items whenever $2 million of RDT&E funded cost has been or is expected to be incurred on the item. The applicable surcharge shall be 5 percent of the item's current DoD inventory price.

3. *Modification Kits*—a. *Developed to Provide an End Item With New or Improved Capability.* An NC percentage charge shall be made whenever $2 million of RDT&E, procurement, or O&M funds have been expended on engineering, development, or testing of the kit. The applicable surcharge shall be 5 percent of the selling price of modification kits transferred under the FMS program or sold commercially by U.S. contractors.

b. *Developed to Improve the Safety, Reliability, Availability, and Maintainability.* The costs of improvement programs that are designed to continuously improve the safety, reliability, availability, and maintainability of an end item or major component over the projected life of the item will be shared equitably by all users of the item. Normally, each user will pay a share of the total annual cost through a Component Improvement Program (CIP) or comparable program. All users are expected to participate in such programs. However, if a user does not participate in a CIP or comparable program, the user will pay an appropriate share of the development costs for any modification purchased after delivery of the system. The calculation of these charges is as follows:

(1) *New items.* For new items entering the system, the cost sharing calculation will be established at the time the NC cost pool is established and the NC recoupment charge is approved. First, the total life of the item will be projected, then the point in time when half of all projected deliveries to non-DoD customers will occur will be estimated. Using actual cost data and data from historical files for similar CIP or comparable programs, the total U.S. investment costs over the life of the program will be estimated. The amount of U.S. investment projected to be incurred up to the previously determined point of half of the deliveries to non-DoD customers will be included in the weapon system NC cost pool. The annual cost of operating the CIP or comparable program will be shared in proportion to the number of items in the possession of each user. This will ensure that the remaining costs of operating the CIP or comparable program will be shared equally by all users of the item.

(2) *Existing Items/Improved Items.* For items already in the inventory that have established NC pro rata charges, or for improved items that meet the criteria for NC pro rata charge revision, all U.S. investment costs incurred before the date of calculation of the revised NC recoupment charge will be included in the NC cost pool. Additionally, all users shall be required to pay on an annual basis in proportion to the number of existing items for participation in the program.

(3) *Modification Kits.* Modification kits designed to improve safety, reliability, availability, and maintainability are issued to FMS customers and incorporated into end item/major components without the additional NC recoupment charge because the applicable development cost is either included in the end item/major component NC recoupment charge or recouped as CIP or comparable program charges on the end item or major components. In exceptional circumstances when a user does not participate in the CIP or comparable program, the user shall be assessed an NC charge for any modifications purchased after delivery of the systems. This charge shall be based on 5 percent of the acquisition cost of each modification kit.

4. *Components of Non-MDE End Items.* A percentage NC recoupment charge shall be made on any non-MDE item component whenever $2 million of RDT&E appropriations has been or is expected to be expended on the component. The applicable charge shall be 5 percent of the component's current FMS selling price for components transferred under the FMS program or sold commercially by a U.S. contractor.

D. Calculation of Charges for Technology Sales

The procedures for the calculation of charges after receipt of authorization to release technology are as follows:

1. *Technical Data Packages.*

a. An NC recoupment charge shall be assessed for the transfer and use of TDPs to be used to manufacture or produce items for non-USG use. This charge is in addition to normal costs associated with reproduction and shipping of TDPs. Charges for the use of TDPs normally are referred to as royalty fees. However, for MDE items, the approved MDE NC recoupment charge shall be assessed for each item manufactured or coproduced in place of a royalty fee.

b. For a non-MDE item, an NC percentage surcharge shall be applied as the royalty fee on the basis of the item's current DoD inventory price. Prescribed charges for non-MDE items are as follows:

(1) Foreign Governments and non-U.S. contractors—5 percent on items manufactured for in-country use and 8 percent on items manufactured for third party use by or on behalf of foreign governments or international organizations.

(2) U.S. Contractors—3 percent on items manufactured for consumption in the U.S. and 5 percent on items manufactured for export.

c. The above charges will be deemed necessary to constitute the "fair market price" for U.S. technology.

d. A TDP developed with USG funds shall not be released to any non-USG parties, including contractors, unless the recipient has agreed in writing to pay the applicable charges prescribed by this Directive and to pay applicable charges within 30 days after manufacture of applicable items.

2. *Software.* A charge shall be made for sales of software whenever $2 million or more has been, or is expected to be, expended by the DoD Component to develop the software regardless of appropriation account. The charge shall be a pro rata charge. The numerator shall be the cost incurred by the DoD Component. The denominator shall be either the number of weapons systems to be supported by the software package or the number of software packages to be duplicated, whichever is the most equitable in the opinion of the DoD Component.

3. *Other Technology Transfers.* For all other technology transfers, including transfers of TDPs for purposes other than manufacturing, and all transfers of industrial or manufacturing processes, the amount of the charge shall equal the fair market value of the technology involved. For transfers to any U.S. domestic organization, this charge shall be the lower of either: (a) A proportionate share of the DoD investment cost identified to the development of the technical data and technology involved; or (b) a fair market price for the technical data and technology involved based on an engineering analysis of demand or the potential monetary return on investment. For transfers to any non-U.S. contractor or other foreign customer, this charge will be the greater of the foregoing two alternatives. Accordingly, the lower domestic price shall be applied only if the prospective domestic purchaser signs a written commitment to the Department of Defense that the technical data and technology shall not be transferred to any other party.

E. Joint DoD Component Development Efforts

DSAA shall designate a lead DoD Component to perform a consolidated calculation when appropriations of more than one DoD Component are involved in the NC investment of an MDE item.

F. "Special" RDT&E and Nonrecurring Production Costs

1. The full amount of "special" RDT&E and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" RDT&E and nonrecurring production costs, a pro rata share of these costs may be paid by the subsequent purchaser and transferred to the original customer provided those special nonrecurring costs exceed $5 million. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be transferred to the original customer if 8 years have elapsed since acceptance of DD Form 1513, "U.S. DoD Offer and Acceptance," by the original customer, unless otherwise authorized by DSAA. The USG shall not be charged any NC recoupment charge if it adopts the features for its own use or provides equipment containing such features under a U.S. Grant Aid or similar program.

2. For coproduction, codevelopment and cooperative development, or cooperative production agreements, the policy set forth in this Directive generally shall determine the allocation basis for recouping from the third party purchasers the investment costs of the participants. Such agreements shall provide for the application of the policies in this Directive to sales to third parties by any of the parties to the agreement and for the distribution of recoupments and technology charges among the parties to the agreement.

G. Munitions Export License Application Reviews

Military Departments shall comment routinely on nonrecurring cost recoupment candidacy as a part of their review of Munitions Export license applications. Sales that are obviously recoupment candidates should be identified to DSAA along with the recommendation that the exporting contractor be informed of the requirement for recoupment and that for specifics, the DoD plant representative should be contacted.

H. Reporting NC Recoupment Collections

1. Funds collected for NC recoupment charges shall be disposed of in accordance with ASD(C) instructions.

2. DoD Components shall provide a quarterly report on the status of NC collections. The Reports Control Symbol is DSAA(Q)1112 (format at enclosure 5). The report shall be forwarded to the DSAA Comptroller within 45 days following the close of each fiscal quarter, with a copy furnished to the DASD(MS). Components shall maintain records of anticipated and actual NC charge collections for the FMS case and known direct commercial sale. Data on direct commercial sales may be obtained from export licenses or from other information provided by DSAA.

Aug. 5, 85
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FORMAT FOR MDE CALCULATION (With Illustrative Entries)

ITEM DESCRIPTION:

Identification No.:

Date Prepared

Dod Component

Preparer's Name, Job Series, and Grade

PART A—NONRECURRING R&D INVESTMENT (NUMERATOR)

	R&D projects			Total
	X	Y	Z	
Major components:				
Air frame	80,000,000			$80,000,000
Engine (JXX)		58,000,000		58,000,000
Radar			5,000,000	5,000,000
Avionics	1,000,000			1,000,000
Undistributed to component air vehicle	20,000,000			20,000,000
Total				164,000,000

PART B.—NONRECURRING PRODUCTION INVESTMENT (NUMERATOR)

	AF 1537, Sept. 1, 1981	Contract XX	Contract ZZ	Total
Major components:				
Air frame	5,000,000			$5,000,000
Engine (JXX)	7,000,000			7,000,000
Radar	3,000,000			3,000,000
Avionics	5,000,000			5,000,000
Undistributed to component air vehicle	10,000,000			10,000,000
Total				30,000,000

PART C.—PROJECTED UNITED (DENOMINATOR)

	Source documents					Totals
	DoD quantities		MAP/ FMS 5-year security assistance plans	ADP project 311	Commercial est. by contracting officer	
	FYDP proc. annex	ADP project 311				
Air frame	.....	1,500	.....	850	.....	$2,350
Engine (JXX)	.....	3,050	.....	2,500	2,000	7,550
Radar	.....	2,700	.....	950	100	3,750
Avionics	.....	1,500	.....	850	.....	2,350
Air Vehicle	1,500	.....	750	.....	.....	2,250

PART D.—COMPONENT NC

	R&D	Production	Total	Projected units	Unit NC recoupment charge
Major components					
Air frame	$80,000,000	$5,000,000	$85,000,000	2,350	[1] $36,170
Engine (JXX)	58,000,000	7,000,000	65,000,000	7,550	[1] 8,609
Radar	5,000,000	3,000,000	8,000,000	3,750	[2] 2,133
Avionics	1,000,000	5,000,000	6,000,000	2,350	[2] 2,553
Undistributed	20,000,000	10,000,000	30,000,000	2,250	[3] 13,334

Notes:
[1] Unit NC recoupment charge calculation for MDE item must be submitted to DSAA for review and approval.
[2] Unit NC recoupment charge for non-MDE item is added to DoD Component schedule of non-MDE charges and reported to the DASD(MS) for publication.
[3] Undistributed systems' NC is recouped on end items.

PART E.—SYSTEM NC CHARGE

1. Current development costs:	
Air frame (1 each system)	$36,170
Engines (2 each system)	17,218
Radar (1 each system)	2,133
Avionics (1 each system)	2,553
Undistributed (allocated to end items)	13,334
2. GFM development costs:	
ISS cannon (2 each system)	500
HR X Radio (1 each system)	250
XM Bomb Sight (1 each system)	300
Access II Scat (1 each system)	700
Total system charge	[1] 73,158

[1] Unit NC recoupment charge calculation for MDE item must be submitted to DSAA for review and approval.

BILLING CODE 3810-01-M

RECOUPMENT OF NONRECURRING COSTS ON SALES OF MDE ITEMS	DATE PREPARED	DOD COMPONENT
	AS OF DATE	NAME AND TELEPHONE NUMBER OF CONTRACT POINT

SECTION A

(a)	(b)			(c)						(d)			(e)
WEAPON SYSTEM OR COMPONENT	NONRECURRING COSTS (IN THOUSANDS)			PRODUCTION QUANTITY						RECOMMENDED PRO RATA UNIT CHARGE			PREVIOUS UNIT CHARGE
	RDT&E	PRODUCTION	TOTAL	ARMY	MARINE NAVY	AIR FORCE	MAP FMS	DIRECT SALE	TOTAL	RDT&E	PRODUCTION	TOTAL	

SECTION B

PRODUCTION QUANTITIES

	ACTUAL		PROJECTION		TOTAL	
MAP						
DIRECT SALE						
FMS						
TOTALS						*Completion of Section C on Reverse is Required*

4-1

BILLING CODE 3810-01-C

Aug 5, 85#
2140.2 (encl 5)

Recoupment of Nonrecurring Costs on Sales of USG Items and Technology

Department of the _____
($ thousands)
Reports Control Symbol: DSAA(Q)1112
Report Preparation Date_____
Report Cutoff Date_____

Total anticipated	Case designator (1)	Purchaser	Item	Fiscal year of sale	Delivery date (4)	NC charge (2) (3)	Actual collections		
							Amount collected this quarter	Amount collected this fiscal year to date	Cumulative collections (5)

Part 1. Recoveries on USG sales to foreign governments and international organizations.
Part 2. Recoveries on direct sales to foreign governments, international organizations, and foreign commercial firms.
Part 3. Recoveries on sales to domestic commercial firms.

NOTES:
(1) Applicable to USG sales to foreign governments and international organizations. For direct sales, use the license number. For domestic sales, establish a "dummy" case number for control purpose. When a license number or "dummy" case number is shown in the case designator column, then the purchaser column should also reflect the name of the contractor who is liable for the payment.
(2) When collection results from the sales of technology, rather than product, place a (T) after the anticipated charge.
(3) Place an asterisk after charge when collection is completed.
(4) For proposed or pending direct sales, place a "P" in this column.
(5) Collections that are completed during the fiscal year will be dropped on the first quarterly report of the subsequent fiscal year.

Jul 27, 87
2140.2 (Encl 6)

EXAMPLE 1—RECOUPMENT OF NC CHARGES FOR MAJOR DEFENSE EQUIPMENT NEW MODELS DERIVED FROM EXISTING MODELS

1. Model	Cost pool	Quantity	Old charge
Facts:			
A(Old) ...	$500,000,000	1,000	$500,000
B(New)..	100,000,000	1,000	.....
	$600,000,000	2,000	.....

2. Old model	New model
1000 Parts.....	1200 Parts.

(NOTE: 900 parts are common to both models)

Step 1: Determine commonality: Commanality is the percentage of the parts in the new model that are common to the old model.

Commanality.....	900	=90%
	1,000	.....

Step 2: Determine the amount of the old item cost pool which benefits both old and new items.

$500,000,000	Old Item Cost Pool.
90%	Commanality.
$450,000,000	Common Cost Pool.

Step 3: Calculate NC charge for new item.

a. Common Cost Pool	Divided by benefiting units	
$450,000,000	2,000	=$225,000.00

b. New Item Cost Pool which does not contain commonality with the old item	Divided by benefiting units	
$100,000,000	1,000	=$100,000.00
Unit Charge for New Model	.....	$325,000.00

Step 4: Determine cost pool of non-common items related to the old item.

a. Old Item Cost Pool	$500,000,000
Less:	
b. Common Cost Pool	450,000,000
Remainder: Old item cost pool which does not contain commonality with the new item.	$50,000,000

Step 5: Recalculate old item NC charge and determine if changed rates should be submitted to DSAA.

a. Old item cost pool	Divided by benefiting units	
$50,000,000	1,000	=$50,000

b. Common Cost Pool	Divided by benefiting units	
$450,000,000	2,000	=$225,000
Recalculated charge for old item	.....	$275,000

c. Comparison of previous old item NC charge with recalculated NC charge for old item.

Recalculated old item charge	Divided by old item charge	
$275,000	$500,000	=55 percent, a 45 percent decrease and $225,000 NC Unit Charge decrease.

ACTION REQUIRED

Step 6: a. Submit request to Director, DSAA for consideration of change of NC rate on old item in accordance with paragraph B.3.b. of the basic directive.

b. Prepare DSAA package because the change in the NC rate in Step 5 exceeds 30 percent and the unit charge decreases by more than $50,000.

Step 7: Proof: Verify that cost pool has been fully allocated.

Old Item 1,000 QTY X $275,000 (Old Item Charge).....	=$275,000,000
New Item 1,000 QTY X $325,000 (New Item Charge)...	=$325,000,000
Total.....	$600,000,000
Cost Pool:	
Old Item.....	$500,000,000
New Item.....	100,000,000
	600,000,000
Difference.....	—0—

Note: The proof is designed only to show that costs are evenly distributed to all units, and the fact that there may have been previous charges at the old rate is to be disregarded for purposes of the calculation.

EXAMPLE 2—RECOUPMENT OF NC CHARGES FOR MAJOR DEFENSE EQUIPMENT NEW MODELS DERIVED FROM EXISTING MODELS

1. Model	Cost pool	Quanity	Old charge
A(OLD)	$400,000,000	1,000	$400,000
B(NEW)	200,000,000	2,500	.....
	$600,000,000	3,500	.....

2. Old model	New model
1000 Parts	1200 Parts

(Note: 600 parts are common to both models)

Step 1: Determine commonality: Commonality is the percentage of the parts in the new model that are common to the old model.

Commonality	600	=60%
	1,000	.....

Step 2: Determine the amount of the old item cost pool which benefits both old and new items:

$400,000,000	Old Item Cost Pool.
60%	Commonality.
$240,000,000	Common Cost Pool.

Step 3: Calculate NC charge for new item

a. Common cost pool	Divided by benefiting units	
$240,000,000	3,500	=$68,571

b. New Item Cost Pool which does not contain commonality with the old item	Divided by benefiting units	
$200,000,000	2,500	=$80,000
Unit Charge for New Model		$148,571

Step 4: Determine cost pool of non-common items related to the old item.

a. Old Item Cost Pool	$400,000,000
Less:	
b. Common Cost Pool	$240,000,000
Remainder: Old item cost pool which does not contain commonality with the new item	$160,000,000

Step 5: Recalculate old item NC charge and determine if changed rates should be submitted to DSAA.

a. Old item cost pool	Divided by benefiting units	
$160,000,000	1,000	=$160,000

b. New common cost pool	Divided by benefiting units	
$240,000,000	3,500	=$68,571
Recalculated charge for old item		$228,571

c. Comparison of previous old item NC change with recalculated NC charge for old item.

Recalculated old charge	Divided by old item charge	
$228,571	$400,000	=57 percent, a 43 percent decrease and $171,429 NC Unit charge decease.

ACTION:

Step 6: Prepare DSSA package because the change in the NC rate in Step 5 exceeds 30% and the unit charge decreases more then $50,000.

Step 7: Proof: Verify that cost pools have been fully allocated.

Old item 1,000 QTY X $228,571 (Old item charge)	=$228,571,000
New Item 2,500 QTY X $148,571 (New item charge)	=371,430,800
	$600,001,800
Total rounded to	$600,000,000
Cost pool:	
Old Item	$400,000,000
New Item	200,000,000
	$600,000,000
Difference	—0—

Note: The proof is designed only to show that costs are evenly distributed to all units. The fact that there may have been previous charges at the old rate is to be disregarded for purposes of calculation.

[FR Doc. 88-11170 Filed 5-20-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHISA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from TÜV Rheinland requesting that NHTSA amend Safety Standard No. 301, *Fuel System Integrity*, to provide specifically for the use of water in crash tests performed to determine compliance with the standard. The petitioner made this request because it believed Stoddard solvent, the currently referenced material used in a vehicle's fuel tank for NHTSA's compliance testing, is too flammable for use in crash testing. The agency is denying the petition because NHTSA finds no safety justification for such an amendment to the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC, 20590. Telephone (202) 366-4915.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, specifies performance requirements for fuel systems of vehicles based on dynamic crash tests and static rollover tests. Under the test conditions set forth in the standard, a test vehicle is loaded to its gross vehicle weight rating, and its fuel tank is filled to any level between 90 and 95 percent of capacity with Stoddard solvent, a hydrocarbon dry cleaning fluid. Fuel spillage is measured for a period of 30 minutes from the moment of impact of the vehicle into a barrier: five minutes during which no more than five ounces may be released, plus a further 25-minute period when spillage must not exceed one ounce per minute.

In October 1987, Technischer Überwachungs-Verein Rheinland (TÜV) submitted a petition for rulemaking requesting that NHTSA amend Standard No. 301 to provide specifically for the use of water in crash tests performed to determine compliance with the standard. TÜV made this request because it believed Stoddard solvent, the test material currently referenced in

the standard, is too flammable and no alternative fluid other than water is available for reference as a test fluid.

According to the petitioner, some test laboratories in Germany believe that crash testing vehicles with fuel tanks filled with Stoddard solvent is unacceptable as unreasonably dangerous to personnel and property. TÜV said that some fires have occurred in test laboratories in the past when Stoddard solvent was used which had resulted in "immense" property damage. TÜV said that because the risk of fire from Stoddard solvent is great, test laboratories refuse to perform indoor crash testing of vehicles whose fuel tanks are filled with the fluid. TÜV argued that this reluctance poses a problem for future crash testing involving the Hybrid III anthopormorphic test dummy, since the dummy needs to be calibrated in a controlled (i.e., indoor) environment. Since indoor crash testing is becoming more prevalent given the calibration needs of the Hybrid III dummy and the state-of-the art advances of test laboratories, TÜV said NHTSA should specifically allow for the use of colored water in Standard No. 301 test procedures, in addition to Stoddard solvent, to reduce the risk of danger to laboratory personnel and equipment.

The petitioner acknowledged the unavailability of fluids which have both the dynamic viscosity and density of gasoline and a flesh point sufficiently high enough to eradicate the petitioner's concern about the risk of fire attendant with certain fluids. Yet, TÜV believed water is a suitable alternative to Stoddard solvent because TÜV said it is unnecessary that water have the exact viscosity of fuel. TÜV said it has tested vehicles for compliance with Standard No. 301 by filling fuel tanks with water and has observed that a vehicle will either meet the requirements of the standard with *no* fluid spillage or the vehicle will fail to meet the standard by far exceeding the permissible spillage rate. Thus, TÜV concluded that the dissimilarity between the viscosities of water and gasoline should not prevent water from being referenced as a test fluid since "the viscosity of the fluid (water) will not influence the test result." The petitioner urged NHTSA to amend Standard No. 301 to add a section to the standard that would specifically allow a manufacturer to use water in a test vehicle's fuel tank if the manufacture could show that the vehicle had performed in a manner equivalent to that required of a vehicle whose tank is filled with Stoddard solvent.

NHTSA has carefully considered the issues raised by TÜV's petition and has determined that the petition should be denied since there is not a reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. NHTSA declines to amend Standard No. 301's test procedures to allow the use of water in compliance testing because the agency believes that such an amendment is not justified by a safety need.

NHTSA took careful note of petitioner's suggestions about the unreasonable risk of fire that Stoddard solvent is said to impose due to its flammability since any unreasonable risk to the safety of laboratory personnel and other persons resulting from any NHTSA test procedure will not be tolerated by the agency. In order to obtain more information on the incidents of laboratory fires occurring in Standard No. 301 testing, NHTSA carefully reviewed its own records on such testing and has found that only one incident of fire occurred over the past 15 years that the agency has tested vehicles using Stoddard solvent. The agency is unable to conclude in this case that one incident demonstrates satisfactorily an unsafe laboratory procedure. Moreover, the one incident occurred during a Standard No. 301 research endeavor which tested a vehicle under conditions wherein fire prevention precautions were less stringent than those of the standard's compliance test. Given the absence of information showing an unreasonable occurrence of fires in Standard No. 301 compliance tests, the agency declines to find that use of Stoddard solvent should cease because it unreasonably increases the likelihood of conflagrations in the laboratory.

Since NHTSA has not found that using Stoddard solvent in compliance testing unreasonably increases the risks to persons and property, the agency concludes that is no justification for referencing a material other than Stoddard in Standard No. 301. The agency will continue to use and provide for the use of only Stoddard solvent to test the integrity of vehicles' fuel systems, since the material has characteristics that are important for the purpose for which the fluid is intended: Its specific gravity and viscosity are similar to that of conventional fuels typically used to operate motor vehicles, yet its flash point is substantially higher than that of gasoline.

Because the purpose of Standard No. 301 is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after vehicle crashes, it is important that the test conditions and procedures of the standard replicate as closely as possible the synergistic effect of variables affecting the behavior of the vehicle in an actual crash situation. Stoddard solvent's physical similarity to vehicle fuel make the fluid a representative material for ascertaining the actual performance of a vehicle and its fuel system in a real world crash. Its flash point of 100 degrees, which is substantially higher that that of gasoline (−45 degrees), make Stoddard solvent a much safer substance than gasoline for crash testing vehicles. Since a vehicle's behavior in a Standard No. 301 compliance that is intended to be representative of its performance in an actual crash, NHTSA believes that the standard should reference a material that is less flammable then most if not all vehicle fuels, yet representative of the material that will be contained in the vehicle's fuel tank at the time of a real-world crash. Stoddard solvent satisfies that criteria.

NHTSA lacks sufficient date to accept or reject TÜV's assertion that vehicles tested by the petitioner either meet Standard No. 301's limited-spill requirements with *no* spillage or fail to meet the standard with *high* spillage rates. The petitioner made this assertion to support its arguments for using water—i.e., that it is unnecessary that the fluid used in the fuel tank have the properties of fuel since fuel spillage results from "braking" or "damage" to the fuel tank and is unaffected by the viscosity of the fluid in the tank. NHTSA does not believe that the large compliance margins in the particular tests witnessed by the petitioner are reason enough for concluding that the physical characteristics of the material contained in a test vehicle's fuel tank are unimportant. Notwithstanding the observations of TÜV, some vehicles tested in NHTSA's compliance tests of Standard No. 301 have shown fuel spillage rates that differ significantly from the extremes witnessed by the petitioner. The agency believes it would be unwise to assume there are no vehicles whose spillage rates are close to the limits set by the standard. The petitioner did not demonstrate that using water would yield spillage results identical to those obtained when Stoddard solvent is used. The agency is therefore unable to determine as did the petitioner that variables such as the viscosity of the material contained in a vehicle's fuel tank have absolutely no effect on compliance margins for certain test vehicles.

The effect of this denial is not to automatically preclude TÜV from using water in its compliance testing. Standard No. 301 does not require TÜV to test its vehicles in only the manner specified therein. The standard merely specifies the manner in which NHTSA will conduct compliance testing. A manuafacturer is permitted by the Safety Act to use any means, consistent with the requirement to exercise due care, to ensure that its vehicles meet all applicable requirements of the standard. This means that the standard does not prevent TÜV from using water or any other test fluid in compliance testing. Manufacturers may choose to conduct testing in according with the compliance test procedures set forth in Standard No. 301 or choose to simulate any or all parts thereof, so long as they can demonstrate that such simulations satisfy the due care standard.

If a manufacturer certified its vehicles using water and NHTSA subsequently tested the vehicle for compliance with Standard No. 301, the agency would do so under the test conditions and procedures specified therein. If the agency found that the vehicle did not comply with the standard when Stoddard solvent was used, it would notify the manufacturer and ask for further information concerning the bases for the manufacturer's certification of the vehicle. The manufacturer would provide the results of its compliance testing to the agency, together with its reasons for concluding that water was a reasonable substitute for Stoddard solvent.

A manufacturer would fail to satisfy its due care responsibilities only if it had insufficient reason to believe that water was an adéquate substitute for Stoddard solvent. If TÜV were ever called upon to provide the results of its compliance tests to NHTSA in the event of an apparent noncompliance, present agency enforcement procedures would give TÜV the opportunity to show why it believed it was reasonable to simulate the standard's test procedures using water or any other materials in the fuel tank instead of Stoddard solvent.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued on May 17, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–11535 Filed 5–20–88; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

49 CFR Part 661

[Docket No. 88–D]

Request for General Waiver of Buy America Requirements.

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: General waiver; request for comments.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is seeking comments on whether a general waiver to the "Buy America" requirements should be granted to permit the procurement of certain audio-visual training equipment produced outside of the United States because UMTA grantees have encountered difficulty in obtaining such equipment which complies with the applicable "Buy America" requirements.

DATE: Comments must be received by June 22, 1988.

ADDRESS: Comments should be submitted to UMTA Docket No. 88–D, Urban Mass Transportation Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9316, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4063.

SUPPLEMENTARY INFORMATION: Section 165(a) of the Surface Transportation Assistance Act of 1982 (STAA) provides that Federal funds may not be obligated for the purchase of manufactured products unless such products are produced in the United States. Section 165(b)(1) of the STAA provides that the general requirements of section 165(a) may be waived if their application would be inconsistent with the public interest. The implementing regulations at 49 CFR 661.7(b) provide that "[i]n determining whether th[e] exception will be granted, [UMTA] will consider all appropriate factors on a case by case basis." Section 165(b)(2) of the STAA provides that the general requirements concerning domestic preference shall not apply if the item or items being procured "are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality." The implementing regulations at 49 CFR 661.7(c) provide that the statutory conditions will be presumed to exist if no responsive and responsible bid is received offering equipment that meets the applicable statutory and regulatory requirements in order to qualify as a domestic manufactured product.

In the preamble to the "Buy America" regulations published in the **Federal Register** on September 15, 1983 (48 FR 41462), UMTA indicated that in certain circumstances in which a public interest waiver is sought under section 165(b)(1), the proposed waiver would be published in the **Federal Register** for comment. Such a procedure is not mandatory before a public interest waiver is granted, but UMTA uses the procedure where the public interest waiver involves important policy considerations or is controversial. It is UMTA's position that important policy considerations exist in this case.

UMTA has received a request from the Iowa Department of Transportation for a "Buy America" waiver relative to the procurement of audio-visual training equipment. The request indicates that recipients of funds under Iowa's rural and elderly and handicapped transit programs have encountered difficulty in finding vendors of video cassette recorders/players, cameras and monitors who are able to certify compliance with the applicable "Buy America" requirements. The request also indicates that research indicated that there are no domestic manufacturers of video-cassette cameras, recorders, playback decks and color video monitors with smaller than 19 inch screens.

Since the grantees involved in the Iowa request are small entities, it would appear that the public interest would be best served by a general waiver which would streamline the purchasing process for all grantees who would need or expect to need similar equipment. Rather than acting on the Iowa request for a waiver on an individual basis, UMTA has determined that it is appropriate to seek public comment on whether such a waiver should be granted on a nation-wide basis. To that end, UMTA specifically seeks comments or responses to the following questions:

1. Should such a general waiver of the "Buy America" provisions be granted to permit the procurement to audio-visual equipment which does not comply with the applicable "Buy America" requirements?

2. What types of audio-visual equipment should be covered by such a waiver?

3. If a waiver is granted, should there be a dollar limit on the applicability of the waiver?

4. Should such a waiver apply to all UMTA grantees or just to recipients of section 18 funds (rural and non-urbanized systems) and recipients of section 16(b)(2) funds (private providers of service to the elderly and handicapped)?

Dated: May 13, 1988.

Edward J. Babbitt,

Chief Counsel.

[FR Doc. 88-11317 Filed 5-20-88; 8:45 am]

BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Tri-State Generation and Transmission Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of 62.4 km (39 miles) of 115 kV transmission line and associated facilities by Tri-State Generation and Transmission Association, Inc. (Tri-State). The proposed facilities would be constructed in Morrill and Garden Counties, Nebraska.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and Tri-State's Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Southwest Area—Electric, Room 0207, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8848; or at the office of Tri-State Generation and Transmission Association, Inc. (Daniel E. McLeod, Manager), 12076 Grant Street, Denver, Colorado 80233, telephone (303) 452–6111, during regular business hours.

Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing from Tri-State, required that Tri-State develop environmental support information reflecting the potential environmental impacts of the project. The information supplied by Tri-State is contained in a Borrower's Environmental Report (BER) which was used by REA to develop its Environmental Assesment (EA). REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The proposed project consists of constructing approximately 62.4 km (39 miles) of new single circuit 115 kV transmission line and associated facilities. The line would originate at Nebraska Public Power District's Covalt Substation and terminate at the Wildhorse Substation. Structures would include both single wood-pole and H-frame structures on 21 meter (70 foot) or 30 meter (100 foot) right-of-way. Associated facilities would include equipment additions at the Covalt, Wildhorse, Lynn and Blue Creek Substations and the Snake Creek Switching Station. The existing Big Springs-Blue Creek 115 kV transmission line would be upgraded to improve line clearance.

Alternatives examined included no action, system alternatives and route alternatives. After reviewing the engineering, economic and environmental aspects of these alternatives, REA determined that the proposed project is an acceptable alternative that meets Tri-State's needs with a minimum of environmental impact.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, Tri-State advertised the availability of its BER in the local newspapers. No comments were received. Tri-State also held public meetings in the project area on April 28 and 29, 1987. All concerns were resolved at the meeting. No other matters of environmental concern have come to REA's attention.

Based upon the environmental support information provided, REA prepared an EA concerning the proposed project and its impacts. As a result of its independent evaluation, REA has concluded that approval of financing assistance enabling Tri-State to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. REA has concluded that the proposed project will have no effect on important farmland, prime rangeland or forest land, threatened or endangered species or their critical habitat, floodplains, wetlands or any properties listed or eligible for listing in the *National Register of Historic Places*. Therefore, REA has reached a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015, Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: May, 16, 1988.

John M. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 88–11453 Filed 5–20–88; 8:45 a.m.]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–501]

Photo Albums and Filler Pages From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by petitioners, four exporters, and an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on photo albums and filler pages from the Republic of Korea. The review covers eighteen purported manufacturers/exporters and one-third country reseller of this merchandise to the United States and the period July 16, 1985 through November 30, 1986. The review indicates

the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

We used the best information available for fourteen firms which failed to respond to our request for information, could not be located, or provided inadequate information in response to our questionnaire.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 51273) an antidumping duty order on photo albums and filler pages from Korea. Petitioners, four exporters and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). On September 21, 1987 the Department published a notice of initiation of antidumping duty administrative review for an additional 26 firms (52 FR 35466). The results of that review will be published at a later date.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of photo albums and photo album filler pages. Photo albums are currently classifiable under TSUSA item number 256.60 and HS item number 4820.50. Photo album filler pages are currently classifiable under TSUSA item number 256.87, 256.90 or 774.55 and HS item number 4820.90, 4823.90, 4819.50, 3920, 3921, or 3926.90.

The Department has preliminary determined that binders which are not sold as components of unassembled albums are not included within the scope of the order. This merchandise is not within the class or kind of merchandise described in the petition or subject to the investigation of sales at less than fair value. Binders need not be shipped together with filler pages to be considered components of unassembled albums and thus within the scope of the order.

The Department has also preliminary determined that imported albums which contain pages manufactured in Korea are included within the scope of the order. The International Trade Commission determined that the essential characteristic of a photo album is the pages it contains, and the antidumping duty order covers both photo albums and filler pages. The Department also finds that pages constitute the essential element of an album and that placing the pages in a cover and binder does not significantly change the product.

The review covers eighteen purported manufacturers/exporters and one third-country reseller of photo albums and filler pages from the Republic of Korea and the period July 16, 1985 through November 30, 1986.

Only one manufacturer/exporter with shipments during the period responded adequately to our requests for information. Eleven firms, including the third-country exporter, did not respond to our questionnaire, one firm is out of business and one firm could not be located. Another firm, Chinsung, provided an inadequate response to the Department's questionnaire for the review period. Chisung failed to furnish additional information to eliminate deficiencies in its original response. Therefore, the Department used the best information available for these fourteen firms, which was the rate for all firms published in the antidumping duty order (50 FR 51273, December 16, 1985). Four other firms had no shipments during the period. These four firms also are not known to be manufacturers or exporters of the merchandise.

Exports to the U.S. by certain additional manufacturers/exporters named in a separate notice of initiation of antidumping duty administrative review (52 FR 33466, September 21, 1987) will be covered by a future notice of preliminary results of administrative review.

United States Price

In calculating United States price for the responsive firm, Dong In, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed f.o.b. or c.&f. price to unrelated purchasers in the United States. We made adjustments for brokerage and handling, foreign inland freight, CFS and wharfage, ocean freight, marine insurance, Korean customs inspection fees, and rebates. Where applicable, we made an addition for import duties collected and rebated on imported materials used to produce subsequently exported merchandise, in accordance with § 353.10(d)(1)(ii) of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value for Dong In, the Department used third-country price or constructed value, as defined in section 773 of the Tariff Act. We did not use home market sales because they were not made in the ordinary course of trade. Third-country prices were used where sufficient quantities of such or similar merchandise were sold to third countries at or above the cost of production to provide a basis for comparison. Third-country price was based on the packed f.o.b., c.&f., or c.i.f. price to unrelated purchasers for export to third countries. We made adjustments for brokerage and handling, foreign inland freight, ocean freight, marine insurance, CFS and wharfage, Korean customs inspection fees, and rebates and adjustments for differences in credit, bank charges, export recommendation charges, GSP stamping charges, and physical characteristics of the merchandise. Where applicable, we

made an addition for import duties collected and rebated on imported materials used to produce subsequently exported merchandise.

Constructed value consisted of the sum of the cost of materials, fabrication, general expenses and packing, plus profit. The amount added for general expenses was the actual cost since actual general expenses were more than the statutory minimum of 10 percent of the sum of materials and fabrication costs. The amount added for profit was 8 percent of the sum of the costs of materials, fabrication and general expenses since actual profit was less than the statutory minimum of 8 percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1985 through November 30, 1986.

Manufacturer/Exporter/Third-Country Reseller (country)	Margin (percent)
Chinsung	64.81
Donam	64.81
Dongbang	64.81
Dong In	[2] 8.37
Dong In/KMB	64.81
Dong In/Ssangyong	64.81
Dong Won	64.81
Dongwoo [1]	([1])
Eunjin	64.81
Keywon	64.81
KMB	64.81
Korean Enterprise	64.81
Korea Transportation [1]	([1])
Sam Bang Trading	64.81
Samwang [1]	([1])
Ssangyong	64.81
Sunkyong	64.81
Three Leaf (Taiwan)	64.81
Western Assembly	64.81
Yangjisa	64.81
Yonsei Shipping [1]	([1])

[1] No shipments during the period. Not a known manufacturer or exporter.
[2] For entries of merchandise manufactured and exported by Dong In only.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates published in the antidumping duty order for each of those firms (50 FR 51273, December 16, 1985).

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 8.37 percent shall be required.

The deposit requirements are effective for all shipments of Korean photo albums and filler pages entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The Department has received information indicating that shipments of photo albums and filler pages from certain third countries may be merchandise of Korean origin for antidumping duty purposes and subject to the antidumping duty order. In order to determine whether such merchandise is subject to antidumping duties, the Department requested the Customs Service to extend liquidation of entries of photo albums and filler pages exported from, or purported to be merchandise of, Taiwan, Singapore or Malaysia, and entries of photo albums and filler pages exported from Hong Kong but purported to be merchandise of another country. This extension of liquidation will remain in effect until we determine whether such merchandise is subject to the order.

In an effort to identify entries of Korean merchandise, we requested information from certain firms in Taiwan, Singapore, Malaysia and Hong Kong. The firms listed below have not responded or have failed to provide adequate information. Unless we receive adequate and timely information, we will regard all photo albums and filler pages exported, or purported to be manufactured, by those firms as products of Korea and will instruct the Customs Service to begin collecting cash deposits of estimated antidumping duties on all photo albums and filler pages exported, or purported to be manufactured, by those firms. This deposit requirement is effective on the date of publication of the final results of the administrative review. Cash deposits of 64.81 percent will be required for the following firms:

Taiwan

Bright Bag
Flomo Plastics
Jackson Dai
Pan Asiaworld
Three Leaf
Walson Enterprises

Hong Kong

Ad-Gifts Manufactory
Aico Inc.
Evergreen & Pych
Mei Lik
Perfect Leatherware
S&C Import Export
Union Paper Box

Singapore

Bumont Int'l
Choo Seng
Singapore Merchandise Export

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: May 16, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-11501 Filed 5-20-88; 8:45 am]
BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, DC 20230; telephone: (202) 377–4733/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than May 31, 1989.

Antidumping duty proceedings and/Firms	Periods to be reviewed
France: Sorbitol (A–427–001)	04/01/87–03/31/88
Roquette Freres	
Italy: Spun Acrylic Yarn (A–475–084)	04/01/87–03/31/88
Manifattura Emmepi	
Fanatasia	
Lanficio di Nervesa/International Fibre	
Mister Joe	
Turriddo Torracchi	
Japan: Calcium Hypochlorite (A–588–401)	04/01/87–03/31/88
Nippon Soda	
Nankai	
Nissan Denka	
Japan: Cyanuric Acid (A–588–019)	04/01/87–03/31/88
Shikoku	
Japan: Dicholoro Isocyanurates (A–588–019)	04/01/87–03/31/88
Shikoku	
Nissan	
Japan: Tricholoro Isocyanuric Acid (A–588–019)	04/01/87–03/31/88
Shikoku	
Nissan	
Japan: Roller Chain, Other Than Bicycle (A–588–028)	04/01/87–03/31/88
Daido Kogyo	
Enuma Chain	
Hitachi Metals	
Izumi	
Pulton	
Sugiyama/Hokoku	
Sugiyama/I & OC	
Sugiyama/Harima	
Takasago	
Tsubakimoto	
Japan: Spun Acrylic Yarn (A–588–086)	04/01/87–03/31/88
C. Itoh	
Itoman	
Mitsui	
Mitsubishi	
Nichimen	
Nissho Iwai	
Gunze Sangyo	
Teijin Shoji	
Kenya: Fresh Cut Flowers (A–779–602)	11/03/86–03/31/88
Sulmac	
Updown	
Plantana	
Bob Harris	
Guy Robbin	
Kenya Flowers	
Brooke Bond Kenya	
ADC Agriculture Development	
Flaco	
Oserian Development	
Republic of Korea: Color Television Receivers: (A–580–008)	04/01/87–03/31/88
Daewoo	
Samsung	
Quantronics	
Goldstar	
Cosmos	
Mexico: Fresh Cut Flowers (A–201–601)	11/03/86–03/31/88
Florex	
Tzitzic Tareta	
Visaflor	
Rancho Mision el Descanso	
Rancho del Pacifico	
Las Flores de Mexico	
Rancho Daisy	
Rancho Alisitos	
Taiwan: Color Televisions (A–583–009)	04/01/87–03/31/88
AOC	
Action Electronics	
Capetronic	
Fulet	
Funai	
Hitachi	
Kuang Yuan	
Nettek	
Paramount	
Philips	
Sampo	
Sanyo	
Shin-Shirasuna	
Tatung	
Thomson	

Countervailing duty proceedings	Periods to be reviewed
Argentina: Cold-Rolled Carbon Steel Flat-Rolled Products (C–357–005)	01/01/87–12/31/87
Brazil: Pig Iron (C–351–062)	01/01/87–12/31/87
Colombia: Leather Wearing Apparel (C–301–001)	01/01/87–12/31/87
Mexico: Leather Wearing Apparel (C–201–001)	01/01/87–12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c)

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 16, 1988.

[FR Doc. 88–11502 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On December 15, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for three firms and 2.28 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 47618) the preliminary results of its administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico (48 FR 43063, September 21, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican portland hydraulic cement and cement clinker other than white nonstaining. Such merchandise is currently classifiable under item numbers 511.1420 and 511.1440 of the Tariff Schedules of the United States Annotated and under

Harmonized System item numbers 2523.10.00, 2523.29.00, 2523.30.00 and 2523.90.00.

The review covers the period January 1, 1985 through December 31, 1985 and 12 programs: (1) FOMEX; (2) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations; (3) CEPROFI; (4) FONEI; (5) NDP discounts; (6) Bancomext loans; (7) state tax incentives; (8) CEDI; (9) FOGAIN; (10) delay of payments on loans; (11) delay of payments to PEMEX; and (12) import duty reductions and exemptions.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely written comments from Cementos Anahuac, Cementos Anahauc del Golfo, Cementos Apasco, Cementos de Chihuahua, Cementos Guadalajara, Cementos Maya, Cementos Mexicanos, Cementos Portland Nacional, Cementos Tolteca and Cementos Veracruz ("the exporters").

Comment 1: The exporters contend that the Department has no authority to impose countervailing duties on duty-free imports from Mexico without an affirmative finding of injury if the United States has an international obligation to provide such an injury test. In the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the "Understanding") signed on April 23, 1985, the United States granted Mexico most-favored-nation ("MFN") status. On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade (GATT). Both the MFN status and GATT membership constitute international obligations of the United States, as defined in section 303. Without a finding of injury in this case, the Department must revoke this order.

The exporters also claim that the United States has a statutory obligation to give MFN treatment to all countries with which the United States has trade relations, regardless of whether there exists an international agreement requiring such treatment. To support their claim, the exporters cite section 251 of the Trade Expansion Act of 1962, 19 U.S.C. 1881, and section 126 of the Trade Act of 1974, 19 U.S.C. 2136. Both provisions provide that treatment accorded under any trade agreement "shall apply to products of all foreign countries." In addition, section 126 of the Trade Act of 1974 limits exceptions to nontariff agreements with "major industrial countries," as defined by this provision. Countervailing duties are tariffs, and Mexico is not a major industrial country as defined in section 126. Therefore, the unconditional MFN treatment required by section 251 and section 126 applies to Mexico. The exporters conclude that because of this long-standing unconditional MFN policy, the United States had an "international obligation" to provide an injury test on duty-free products from Mexico long before Mexico's accession to the GATT.

Department's Position: We addressed most of these issues in the final results of the last administrative review in this case (51 FR 44501, December 10, 1986). We believe that we lack the authority to revoke this countervailing duty order on the basis of the Understanding. Although Article 8 of the Understanding grants MFN status to Mexico, Article 5 of the Understanding limits the provision of an injury test to "investigations in progress," or those commenced after April 1985. Article 8 may not be read independently. It must be read within the context of the rest of the Understanding, the scope of which, for purposes of the injury test, is limited by its own terms.

Contrary to the exporters' contention, MFN status in and of itself does not constitute an "international obligation," as defined in section 303(a)(2), for purposes of requiring an injury test before assessing countervailing duties on entries covered by this review. Section 303(a)(2) reads, in relevant part, "* * * unless a determination of injury is required by the international obligations of the United States." The international obligation created in Article 8 does not extend to entries covered by this review because the Understanding itself makes clear that the only international obligation of the United States is to provide an injury test to investigations in progress or investigations begun after April 1985. The investigation in this case was completed in 1983. Therefore, the United States is not required by the MFN language in Article 8 to grant an injury test in this case on entries of merchandise covered by this review.

We disagree with the exporters' argument that U.S. policy is to grant unconditional MFN treatment to all countries regardless of whether they have entered into a trade agreement with the United States that grants such treatment. The unconditional MFN language in section 126 of the Trade Act of 1974 and section 251 of the Trade Expansion Act of 1962, referred to by the exporters to support this proposition, first appeared in 1934, 48 Stat. 943. The 1934 statute authorized the President to enter into trade agreements which accord MFN treatment. These agreements would require the United States to grant treatment to co-signatories no less favorable than that accorded to other trade partners with whom the United States had bilateral or multilateral arrangements. This is apparent from the fact that the 1934 statute served as authorization for the negotiation of several bilateral trade treaties (including one with Mexico, which was later terminated) that specifically provided for MFN treatment prior to the formation of the GATT in 1948. The United States would not have entered into these trade treaties if the 1934 statute itself required an "automatic" grant of MFN treatment to all trading partners, as the exporters suggest. Accordingly, the argument that the unconditional MFN language in sections 126 and 251 is intended to grant automatic MFN treatment to all countries is not supposed by the history of the provision itself.

Even if the exporters' argument were valid, sections 126 and 251 both contain exceptions for other provisions of law ("Except as otherwise provided in this chapter or in any other provision of law"). The provision contained in section 303(a)(2) to the effect that an injury determination is required prior to the imposition of countervailing duties only if the "international obligations of the United States" require such a determination, qualifies as "any other provision on law," and thus comes within the exceptions contained in sections 126 and 251.

More importantly, section 126 of the Trade Act of 1974 applies only to tariff negotiations entered into under that chapter. Contrary to the exporters' contention, countervailing duties are not "tariffs," or "import restrictions," as defined in chapter 1 of the 1974 law. A tariff, which is an import tax, may properly be regarded as an import restriction. A countervailing duty on the other hand merely equalizes the effect of foreign government subsidization of products imported into the United States. The MFN principle, as articulated in section 126, does require that the same tariff be applied to the same product from all countries accorded MFN status by the United States. Section 101 of the 1974 law authorizes the president to enter into trade agreements and to raise or lower tariffs by a specific formula, pursuant to these agreements. Section 101 in no way serves as authorization to raise or lower countervailing duties, which are based upon the rate of subsidization of a particular product from a particular country.

Section 102 of the 1974 law, and not section 101, serves as authorization for negotiating future agreements regarding

treatment of subsidy practices (including the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (the "Subsidies Code")) and other trade distorting practices. This section is separate and distinct from section 101, and by its very terms does not fall under the requirements of section 126. Section 102 makes clear that benefits negotiated are to be available only to countries that obligate themselves to grant similar benefits to the United States. Therefore, even though section 126 does not require an automatic grant of MFN treatment to trading partners unless they are parties to an agreement granting such treatment, it is clear that this section only applies to normal duties or tariffs and not to measures, such as countervailing duties, that offset trade distorting practices.

The clearest indication of Congress' intent regarding the provision of the injury test can be found in the legislative history of the Trade Agreements Act of 1979. That act amended section 303 to include references to title VII of the new countervailing duty law. The legislative history of that section states:

> Present law.—Section 303 of the Tariff Act (19 U.S. 1303) contains few procedural provisions * * * The ITC injury determination is required * * * only with respect to duty-free goods and only to the extent required by the international obligations of the United States. The United States is obligated to apply the injury test under section 303 only with respect to duty-free products of countries which have fully acceded to the General Agreement on Tariffs and Trade.

S. Rep. No. 96–249, 96th Cong. 1st Sess. 103 (1979).

For these reasons, the exporters' claim that the United States is obligated to grant an injury test by virtue of the MFN principle, irrespective of GATT membership or other agreements, finds no support in the statute or its legislative history.

Finally, we are considering the issue of an injury test for Mexican duty-free products entered after Mexico acceded to the GATT. Since Mexico's accession to the GATT was effective on August 24, 1986, this issue does not affect entries covered by this review, which extends only through December 31, 1985.

Comment 2: The exporters contend that the Department's position that its potential injury obligations to Mexico only affect entries made after August 24, 1986, the date of Mexico's accession to the GATT, is not consistent with applicable law or with its own precedents. Section 303(a)(2) of the Tariff Act states that "duties may be imposed under this section only if there are affirmative determinations by the Commission * * *" The term "imposed" specifically refers to the final imposition of duties through the liquidation of entries. The Subsidies Code states in Article 4, paragraph 2, footnote 14 that "[a]s used in this agreement 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax." The term "imposition" as used in section 303 and the term "levy" as used in the GATT are synonymous. This is the interpretation followed by the Department in *Certain Fasteners from India: Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order*, (47 FR 44129, October 6, 1982).

Since the entries covered by this administrative review have not yet been liquidated, the Department cannot now instruct Customs to liquidate these entries because liquidation, or the final levy or imposition of duties, would take place well after August 24, 1986. The dispositive issue is not whether entries were made before Mexico's accession to the GATT, but whether the Department issues instructions to "levy" or "impose" duties after Mexico's assession to the GATT, even if those instructions cover entries made before Mexico's assession.

Furthermore, Cementos de Chihuahua argues that the Department's position regarding its authority to liquidate at this time is inconsistent with its own precedents in *Certain Fasteners from India, Certain Scissors and Shears from Brazil*, (50 FR 11927; March 26, 1985) (preliminary), and *Carbon Steel Wire Rod from Trinidad and Tobago*, (50 FR 19511; May 9, 1985). In these cases, the Department determined that it lacked the authority to assess countervailing duties because the merchandise covered by the orders was duty-free and was exported from countries that were GATT members.

Department's Position: We agree that the word "impose" as used in section 303 refers to the final legal assessment of duties. We do not agree that this interpretation of the word "impose" precludes us from assessing countervailing duties on duty-free imports from Mexico that were entered before Mexico's accession to the GATT, regardless of whether our instructions to Customs are issued after Mexico's assession. Before Mexico's assession to the GATT, the United States had no "international obligation" toward Mexico to provide an injury test on entries of merchandise covered by this review.

When the Tariff Act was amended by the Trade Agreements Act of 1979, section 303(b) was amended to provide that the duty imposed under section 303(a) shall be imposed in accordance with the "new" countervailing duty law. Under the new law, the Department assesses duties based on the published results of administative reviews. Thus, the statutory scheme envisions that estimated countervailing duties will be deposited upon entry of merchandise which is the subject of a countervailing duty order, but that the determination and assessment of the actual countervailing duties will be postponed until the Department has had an opportunity to conduct a review pursuant to 19 U.S.C. 1675(a).

The practice of determining the actual amounts of countervailing duties due *after* the entry of merchandise comports with the long-established Customs practice of imposing liability for duties upon the entry of the merchandise, but permitting the actual amount of duties to be determined and assessed at a later date. *See, e.g.*, 19 U.S.C. 1504, which in pertinent part allows liquidation to take place after entry if the requisite information is not available or liquidation is suspended as required by statute or court order. *See* also, *Zenith Radio Corporation* v. *United States*, 1 CIT 180, 184, 509 F. Supp. 1281 (1981), for the proposition that a claim by the United States for duties arises upon the entry of merchandise into the Customs territory even though the exact amount of the claim is not determined until liquidation. *See* also, *Ambassador Division of Florsheim Shoes* v. *United States*, 748 F. 2d 1560 (Fed. Cir. 1984), for the proposition that, in the case of countervailing duties imposed under section 303, liquidation of entries of merchandise subject to a countervailing duty order is required to be suspended by law until Commerce has determined the amount of the countervailing duty to be imposed in a periodic review conducted under 19 U.S.C. 1675(a).

Finally, our position that we have the authority to direct the Customs Service to collect actual countervailing duties based upon the final results of this administrative review is entirely consistent with our position in *Certain Fasteners from India, Carbon Steel Wire Rod from Trinidad and Tobago*, and *Certain Scissors and Shears from Brazil*. In both *Certain Fasteners from India* and *Carbon Steel Wire Rod from Trinidad and Tobago*, the countries involved were contracting parties to the GATT and the products involved were duty-free at the time they were imported into the United States. Similarly, in *Certain Scissors and Shears from Brazil*, we stated that we would not collect countervailing duties on certain duty-free merchandise covered by the

order because during the assessment period Brazil was a GATT member and the merchandise was duty-free. Chihuahua fails to recognize that in each of these three cases the common facts were that the exporting country was a GATT member and the merchandise was duty-free *during* the potential assessment period. None of these cases is analogous to the present case because Mexico was *not* a member of the GATT at the time the duty-free cement covered by this review was imported.

Thus, the importers' liability for the payment of actual countervailing duties, just as the liability for the payment of other import duties, is established at the time that the merchandise is entered, even though the actual amount of duty is determined and assessed at a later date. The merchandise covered by this review was entered at a time that Mexico was not a GATT member and the United States had not extended the right to an injury test to duty-free products from Mexico. Therefore, we have the authority to assess duties on all entries covered by this review. This conclusion is supported by *Cementos Guadalajara* v. *United States et al.*, Slip Op. 88–48, where, in addressing these same issues in a challenge to the last review of this order, the Court of International Trade affirmed the Department's authority to assess duties after Mexico's accession to the GATT on merchandise entered into the United States before that accession.

Comment 3: Cementos de Chihuahua disagrees in part with the Department's conclusion that Article 15 loans are countervailable. While the Department was correct in stating that Category 12 applies only to exported products, the terms of such financing should be compared to the terms of Article 15 financing for the other 11 categories. Loans under those categories are generally available. Only the differential, if any, between Category 12 financing and other Article 15 financing should be considered a countervailable benefit. *See, e.g., Softwood Lumber Products from Canada* (51 FR 347453, October 22, 1986) and *Canned Tuna from the Philippines* (48 FR 50133, October 31, 1983).

Department's Position: We disagree. We addressed this issue in the final results of our last review (51 FR 44502, December 10, 1986).

Comment 4: Cementos de Chihuahua contends that Category I and Category II CEPROFI tax certificates are available to all industries located outside Mexico City, and consequently, the certificates do not bestow countervailable benefits. It is not logical to conclude that a tax credit available to an entire country (except for one city) constitutes a regional subsidy. The Department analyzed a similar situation with respect to industrial estates that were scattered throughout Malaysia and found the program not countervailable because it was not limited to any "specific regions." *See, Certain Textiles and Textile Mill Products from Malaysia* (50 FR 9852, March 12, 1985). *See* also, *Carbon Steel Wire Rod from Saudi Arabia* (51 FR 4206, February 3, 1986).

If the Department continues to believe that those CEPROFIs are countervailable, the benefit should be the difference between the CEPROFI amounts actually received and the CEPROFI amounts that would have been received for the purchase of Mexican-made capital goods. The Department found CEPROFIs granted for the purchase of Mexican-made capital goods not countervailable in *Oil Country Tubular Goods from Mexico* (49 FR 4705, November 30, 1984).

Chihuahua similarly contends that FONEI loans do not constitute countervailable regional subsidies. Such loans are available in all regions except Mexico City.

Department's Position: We disagree. We addressed this issue in a prior administrative review of this case (50 FR 51732, December 19, 1985).

Comment 5. Cementos de Chihuahua contends that its Bancomext loan is not countervailable because it was provided on terms consistent with commercial considerations. The interest rate and terms of the loan were negotiated between Bancomext and Chihuahua. Furthermore, there is no government-mandated program or legislation which provides for such a loan.

Department's Position: This loan was provided at below-market rates by the National Bank of Foreign Trade (Bancomext), which is the FOMEX trustee. Neither Chihuahua nor the Mexican government has provided any documentation to support the claim that this loan was provided on terms consistent with commercial considerations or without government direction. Therefore, we determine, as the best information available, that this loan is an export bounty or grant. *See* also, *Lime from Mexico: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 35675, September 11, 1984).

Final Results of Review

After considering all timely comments received, we determine the total bounty or grant to be zero or *de minimis* for three firms and 2.28 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

The following three firms received zero or *de minimis* benefits during the review period:

(1) Cementos Guadalajara, S.A.
(2) Cementos Maya, S.A.
(3) Cementos Tolteca, S.A.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the three firms listed above and to assess countervailing duties of 2.28 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the three firms listed above and, due to the change in the FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 1.44 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: May 13, 1988.

[FR Doc. 88–11503 Filed 5–20–88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain hot-rolled sheet.

DATE: Comments must be submitted on or before June 2, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC, U.S.-Korea, and the U.S.-Brazil arrangements provide that if the U.S. determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet the demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain AISI grade C1010, commercial quality hot-rolled sheet, in coils, with widths ranging from 36 to 55 inches, thicknesses ranging from 0.061 to 0.171 inch, and coil weights of 40,000 lbs. (plus or minus 10 percent). This material will be used in the manufacture of pipe and tube.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than June 2, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 16, 1988.

[FR Doc. 88–11504 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; University of California

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instrument of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–164. *Applicant:* University of California, San Diego, Psychology Department, C–009, La Jolla, CA 92093–0109. *Instrument:* Magnetic Inductance Eye-Tracking System. *Manufacturer:* John Mason, United Kingdom. *Intended use:* The instrument is intended to be used in experiments to determine how different part of the temporal lobe of the brain are used in performing cognitive tasks requiring memory and selective attention in order to provide insight into disorders of memory and attention such as Alzheimer's Disease and amnesia in people. *Application received by Commissioner of Customs:* April 12, 1988.

Docket Number: 88–165. *Applicant:* Thomas Jefferson University, Jefferson Medical College, Pennsylvania Muscle Institute IIID2, Department of Physiology, 1020 Locust Street, Phildelphia, PA 19107. *Instrument:* Flash Lamp for Photolysis. *Manufacturer:* Gert Rapp, West Germany. *Intended use:* The instrument is intended to be used for rapid initiation of contractions in smooth and striated muscles. A high intensity flash, provided by the instrument, is delivered to a small bundle of smooth muscle or single skeletal muscle fiber, in order to release biologically active agents from inert, photolabile precursors. *Application received by Commissioner of Customs:* April 12, 1988.

Docket Number: 88–166. *Applicant:* Harvard Medical School, 25 Shattuck Street, Boston, MA 02115. *Instrument:* Electron Microscope, Model JEM–1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended use:* The instrument will be used for the following investigation: (i) How nerve cells in the retina communicate with each other; (ii) the molecular structure of the channels through which cells exchange information with one another; (iii) how epithelial cells and extracellular materials interact in development; (iv) how the stomach repairs itself after injury. In addition, the instrument will be used on a one-to-one basis in the training of graduate students and postdoctoral fellows in electron microscopy. *Application received by Commissioner of Customs:* April 12, 1988.

Docket Number: 88–167. *Applicant:* Woods Hole Oceanographic Institution, Water Street, Woods Hole, MA 02543. *Instrument:* Borehold Seismometer Array. *Manufacturer:* Compagnie Generale De Geophysique, France. *Intended use:* The instrument will be used in seismic experiments to determine the background seismic noise level as a funciton of depth below the seafloor and the properties of the noise such as coherency, stationarity, frequency dependence and polarization. *Application received by Commissioner of Customs:* April 13, 1988.

Docket Number: 88–168. *Applicant:* University of California, San Francisco, #1556 HSE, Department of Biochemistry and Biophysics, 513 Parnassus, San Francisco, CA 94143. *Instrument:* Quench-Flow Rapid Kinetics Apparatus, Model PQ–53. *Manufacturer:* Hi-Tech Scientific, Inc., United Kingdom. *Intended use:* The instrument will be used for studies of EcoRI endonuclease and related mutant enzymes. Experiments will be variations on the basic method of quench-flow kinetics. *Application received by Commissioner of Customs:* April 13, 1988.

Docket Number: 88–169. *Applicant:* UMDNJ–RWJ Medical School Center for Advanced Biotechnology and Medicine, 675 Hoes Lane, Piscataway, NJ 08854. *Instrument:* Multiple Function X-Ray Diffraction System, Model RU–200. *Manufacturer:* Rigaku Corp., Japan. *Intended use:* The instrument will be used for studies of viruses, viral particles and macromolecules. The immediate objectives pursued are gaining a comprehensive understanding of the atomic structure of the materials as a step in understanding their role in the cause of disease and in identifying potential interventions to disrupt or reverse this process.. *Application received by Commissioner of Customs:* April 14, 1988.

Docket Number: 88–170. *Applicant:* UMDNJ–RWJ Medical School Center for Advanced Biotechnology and Medicine, 675 Hoes Lane, Piscataway, NJ 08854.

Instrument: Multiple Function X-Ray Diffraction System, Model RU–200. *Munfacturer:* Rigaku Corp., Japan. *Intended use:* The instrument will be used for studies of viruses, viral particles and macromolecules. The immediate objectives pursued are gaining a comprehensive understanding of the atomic structure of the materials as a step in understanding their role in the cause of disease and in identifying potential interventions to disrupt or reverse this process. *Application Reveived by Commissioner of Customs:* April 14, 1988.

Docket Number: 88–171. *Applicant:* Vanderbilt University, Department of Molecular Biology, Box 1820 Station B, Nashville, TN 37235. *Instrument:* Spectroflu/photometer and Rapid-Mixing and Rapid-Quench Apparatus. *Manufacturer:* Biologic Co., France. *Intended use:* The instrument will be used for studies of sarcoplasmic reticulum of muscle cell in experiments designed to measure the time course of Ca^{2+}-ATPase and Ca^{2+} transport in the millisecond time range. The objectives of these studies are to understand the Ca^{2+} transport and its relation to muscle relaxation. *Application Received by Commissioner of Customs:* April 15, 1988.

Docket Number: 88–172. *Applicant:* California Institute of Technology, Mail Code 315–6, Pasadena, CA 91125. *Instrument:* Mass Spectrometer System, Model THQ. *Manufacturer:* Finnigan MAT, West Germany. Intended use: The instrument will be used to examine the chemical abundances and isotopic compositions of selected samples during studies of meteorites, lunar samples and terrestrial samples. *Application Received by Commissioner of Customs:* April 15, 1988.

Docket Number: 88–173. *Applicant:* Thomas Jefferson University, Jerferson Medical College, Laboratory of Pennsylvania Muscle Institute IID2, Department of Physiology, 1020 Locust Street, Philadelphia, PA 19107. *Instrument:* Computer/filter Circuit for Force Transducer. *Manufacturer:* Dr. K. Guth, West Germany. *Intended use:* The instrument is an accessory to an existing microfluorometry/servo system which will be used for research on isolated smooth and striated muscle fibers from rabbit. The overall objective of the studies is to learn how chemical energy is transduced into mechanical output in muscle. *Application Received by Commissioner of Customs:* April 18, 1988.

Docket Number: 88–174. *Applicant:* University of Michigan, Civil Engineering Department, Ann Arbor, MI 48109–2125. *Instrument:* Motion Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Inc., Canada. *Intended use:* The instrument will be used for studies of concrete materials and structural members made out of reinforced concrete or prestressed concrete. Deformations and strains properties will be measured. Experiments will include tension, compression, bending, fatigue and cyclic loads under large induced deformations simulating earthquake loads. In addition, the instrument will be used for educational purposes in the courses Prestressed Concrete Design and Fiber Reinforced Cementitious Materials. *Application Received by Commissioner of Customs:* April 18, 1988.

Docket Number: 88–175. Applicant: Rutgers University, Department of Chemistry, 73 Warren Street, Newark, NJ 07102. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended use:* The instrument will be used in conjunction with a spectrophotometer and a computer to study the rates of fast biochemical and organic reactions in order to learn about the fundamental processes which govern the rates of reactions. *Application Received by Commissioner of Customs:* April 18, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–11505 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Future of Groundfish Fisheries and Bycatch Committees have scheduled two separate public meetings as follows:

Future of Groundfish Fisheries Committee—On June 1, 1988, at 10 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Montlake Auditorium, 2725 Montlake Boulevard, East, Seattle, WA, will finalize recommendations for alternative management strategies for the Alaskan groundfish fisheries, which will be presented to the North Pacific Council at their June 22–24, 1988, meeting in Anchorage, AK. The public meeting may continue into June 3, 1988.

Bycatch Committee—On June 7, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE., Building 4, Room 2079, Seattle, WA, will develop a directed fishing definition for consideration by the North Pacific Council, and review the time and area closure plan for crab in the Kodiak area. The public meeting will adjourn on June 10, 1988.

For further information about the above meetings contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: May 17, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–11443 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Proposed Modification of Permit; Northwest and Alaska Fisheries Center NMFS (P77#28)

Notice is hereby given that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, NE., Seattle, Washington 98115, has requested a modification of Permit No. 598 issued on July 27, 1987 (52 FR 27097), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is authorized to take up to 32,500 fur seal *(Callorhinus ursinus)* pups. The Permit Holder is requesting to take an additinal 30,000 juvenile male (subadult males) northern fur seals annually by roundup, principally on St. Paul Island, Alaska during studies to determine the natural survival rate of male fur seals, and to study entanglement rates of the Pribilof Islands herd. Up to 3,900 juvenile males (about 13 percent of the total) will be captured by physical restraint, marked, handled and released each year and the rates of survival monitored. No intentional sacrifices are requested. Animals may also be taken on St. George, Bogoslof, and San Miguel Islands.

Concurrent with the publication of this notice in the **Federal Register**, The Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed

modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fishseries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Services.

Date: May 17, 1988.

[FR Doc. 88–11437 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Genzyme Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Genzyme Corporation, having a place of business at 75 Kneeland Street, Boston MA 02111, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–137,796, "Cloned DNA for Synthesizing Unique Glucocerebrosidase." Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–11484 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Minco Products, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Minco Products, Inc., joint owner of the invention, having a place of business at Minneapolis, Minnesota, an exclusive license in the United States and foreign countries under the rights of the United States of America to manufacture, use, and sell products embodying the invention entitled "Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes," U.S. Patent No. 4,681,855, Application S.N. 6–762,740. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce, and to Minco.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–11485 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Transshipment Charge for Cotton Towels Produced or Manufactured in Pakistan

May 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging imports of transshipments to current limits.

EFFECTIVE DATE: May 24, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: Investigations by the U.S. Customs Service in cooperation with the Government of Pakistan, have determined that cotton towels in Categories 363 and 369–S, produced or manufactured in Pakistan were transshipped through Thailand during the period August 1, 1985 through December 31, 1985 and through Bangladesh during the period December 1, 1985 through November 30, 1986. As a result of recent negotiations held between the Government of the United States and Pakistan, specified amounts of overshipment charges are being charged to the current limits for Categories 363 and 369–S. The U.S. Government is taking this action in conformity which Article 16 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 51 published in the **Federal Register** on January 4, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

May 18, 1988.

Committee for the Implementation of Textile Agreements

May 18, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20 and June 11, 1987, between the Government of the United States and Pakistan, I request that, effective on May 24, 1988, you charge the following amounts to the current limits established in the directive of December 30, 1987 for cotton textile products in Categories 363 and 369–S[1], produced or manufactured in Pakistan and exported during 1988. These charges are for goods transshipped through Thailand during the period August 1, 1985 through December 31, 1985 and through Bangladesh during the period December 1, 1985 through November 30, 1986.

Category	Amount to be charged
363	1,388,508 numbers.
369–S	185,510 pounds.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11477 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–OR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, June 7, 1988; Tuesday, June 14, 1988; Tuesday, June 21, 1988; and Tuesday, June 28, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 18, 1988.

[FR Doc. 88–11499 Filed 5–20–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, June 22, 1988, 8:00 a.m.

Place: Keystone Conference Center, Ranch House, 22010 Highway 6, Dillon, Colorado.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss study assignment and review task group assignments.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.
—Review task group status including industry survey data.
—Discuss study draft assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88–11507 Filed 5–20–88; 8:45 am]

BILLING CODE 6450–01–M

[1] In Category 369–S, only TSUSA number 366.2840.

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and time:

June 13, 1988, 9:00 a.m.–5:00 p.m.
June 14, 1988, 9:00 a.m.–4:00 p.m.

Place: Tennessee Innovation Center, 701 Scarboro Road, Oak Ridge, TN 37830, Lecture Hall.

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER–11), Office of Energy Research, Washington, DC 20545, Telephone: 301–353–3081.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda: Briefings and discussions of:

June 13, 1988

- Status of BES Budgets.
- BESAC Subcommittee Reports.
- ORNL Status Report on High Flux Isotopes Reactor.
- Public Comment (10 Minute Rule).

June 14, 1988

- BESAC Agenda for 1988.
- BESAC 1988 Report.
- ORNL Research Highlights.
- Public Comment (10 Minute Rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–11479 Filed 5–20–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–302–001 et al.]

Pacific Gas and Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 17, 1988.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER88–302–001]

Take notice that on May 6, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing pursuant to Commission Order dated March 21, 1988, a revised interconnection agreement to clarify Modesto's unrestricted right to use Reserved Transmission Service for importing power, both firm and nonfirm power, into its service area and PG&E's contractual obligation to provide additional Reserved Transmission Service at Modesto's request.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER86–558–013]

Take notice that on May 4, 1988, Gulf States Utilities Company tendered for filing a revised compliance report for the settlement agreement among Gulf States Utilities Company, Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn GT, Inc. and Sam Rayburn Municipal Power Agency.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER88–386–000]

Take notice that on May 9, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during March 1988, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Gas & Electric Co	Supplement No. 32
Sacramento Municipal Utility Dist.	Supplement No. 7
Sierra Pacific Power Co	Supplement No. 74
Utah Power & Light Co	Supplement No. 76
Washington Water Power Co.	Supplement No. 57
Puget Sound Power & Light Co.	Supplement No. 33
Portland General Electric Co.	Supplement No. 58

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER88–387–000]

Take notice that on May 9, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to sell capacity to Long Island Lighting Company (LILCO). The agreement provides for a capacity charge of $75.00 per megawatt per day for 250 megawatts and an energy charge based upon incremental costs of generation.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of April 28, 1988.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power & Light Company

[Docket No. ER88–388–000]

Take notice that on May 11, 1988, Mississippi Power & Light Company (MP&L) tendered for filing a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of May 1, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas & Electric Corporation

[Docket No. ER88–389–000]

Take notice that on May 11, 1988, Central Hudson Gas & Electric Corporation (Central Hudson) tendered

for filing as a rate schedule an executed Agreement dated May 2, 1988 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for purchase of capacity and energy by O&R from Central Hudson. The point of delivery for transactions shall be in New York State at the 115 Kv. bus at the combined O&R/Central Hudson Sugarloaf Substation.

O&R shall pay Central Hudson for the firm capacity and energy provided in accordance with the terms of the Agreement.

Central Hudson states that copies of the subject filing were served upon: Orange and Rockland Utilities, Inc., 75 West Route 59, Spring Valley, New York 10977.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Houston Lighting & Power Company

[Docket No. ER83-657-001]

Take notice that on May 9, 1988, Houston Lighting & Power Company (HL&P) tendered for filing pursuant to Commission Order dated April 7, 1988, Transmission Service Agreements required to specify the service provided by HL&P to Central Power & Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, collectively the Operating Companies of Central and South West Corporation. The service agreements implement the transmission arrangements offered by HL&P's FERC Electric Tariff, First Revised Volume I, governing Transmission Service To, From and Over Certain HVDC Interconnections.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Power Company

[Docket Nos. ER82-553-033, ER82-554-003]

Take notice that on May 9, 1988, Ohio Power Company (OPCo) tendered for filing pursuant to Opinion Nos. 272 and 272-A of the Commission issued April 30, 1987 and April 7, 1988, respectively, in Docket Nos. ER82-553-000 and ER82-554-000, a compliance filing and a refund report. OPCo states that the compliance filing includes proposed changes in its electric resale rate schedules applicable to the interconnection agreement between OPCo and Wheeling Power Company and to the Electric Tariff MRS for Municipal Resale Electric Service. OPCo also states it has refunded to its 15 municipal customers (Municipals) an amount of $2,372,105.29 representing a principle amount of $1,811,991.23, plus $560,114.06 interest. OPCo has also refunded to Wheeling Power Company an amount of $10,394,222.88 representing a principle amount of $7,698,098.45, plus $2,696,124.43 interest.

Copies of the filing were served upon Wheeling Electric Company, the Public Service Commission of West Virginia, the affected municipal customers and the Public Utilities Commission of Ohio.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Light and Power Company

[Docket No. ER88-385-000]

Take notice that on May 9, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated October 6, 1986 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Fitchburg Gas and Electric Light Company (FG&E).

CL&P states that the Transmission Agreement provides for transmission services to FG&E for the wheeling of a maximum of 50 megawatts of Connecticut Municipal Electrical Energy Cooperative (CMEEC) electric capacity and associated energy.

The transmission charge rate is a weekly (monthly) cost-of-service rate equal to one fifty-second (one-twelfth) of estimated annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule A and Exhibits I, II, and III thereto of the Transmission Agreement. The weekly transmission charge is determined by the product to (i) the transmission charge rate ($/kW-week (month)) and (ii) the maximum number of kilowatts FG&E purchases from CMEEC during an hourly period of such week (month). The transmission charge is reduced to give due recognition for payments made by FG&E to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as of October 6, 1986.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and FG&E (Fitchburg, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Alabama Power Company

[Docket No. ER88-390-000]

Take notice that on May 12, 1988, Alabama Power Company (APCo) tendered for filing proposed changes related to its FPC Electric Service Tariff, No. 33. The filing consists of a Letter Agreement between Tennessee Valley Authority (TVA) and APCo dated April 20, 1988. The Letter Agreement extends until June 30, 1997 certain transmission agreements between the two companies that are currently on file with the Commission.

The electric facilities of APCo and TVA have been interconnected for decades and, at present, such interconnected operations are governed by the terms of the Interconnection Agreement dated July 1, 1965, as amended, between TVA and the operating companies of the Southern Company (*i.e.* APCo, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company). This Interconnection Agreement is designated Southern Company Services, Inc., Rate Schedule FPC No. 33.

In connection with their interconnected operations TVA and APCo have found it mutually beneficial to enter into agreements, separate and apart from the above-referenced Interconnection Agreement, to deal with particular facilities and transactions between TVA and APCo. The provisions of the Interconnection Agreement between TVA and Southern Companies provide that the parties will be under no obligation to renew or replace any separate transmission arrangements in the event that agreement to do so is not reached within six months after April, 1987. In the context of six such agreements, TVA and APCo have concluded that there is presently no need for significant changes in the existing arrangements between them. Thus, TVA and APCo have agreed simply to extend each of the agreements for a period ending on June 30, 1997.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. John M. Endries

[Docket No. ID-2227-001]

Take notice that on May 10, 1988, John M. Endries tendered for filing a supplemental application for authorization under section 305(b) of the Federal Power Act, 16 U.S.C. 825(d) and

18 CFR Part 45 of the Regulations of the Federal Regulatory Commission to hold the following interlocking positions:

Position, Corporation, and Classification

President, Niagara Mohawk Power Corporation, Public Utility
Director, Niagara Mohawk Power Corporation, Public Utility
Director, Utility Mutual Insurance Company, Other Corporation (Insurance)
Director, Syracuse Regional Board, Marine Midland Bank, N.A., Other Corporation (Commercial Bank)
Director, Opinac Investments Ltd., Other Corporation (Non Jurisdictional)
Director, HYDRA-CO Enterprises, Inc., Other Corporation (Subsidiary)

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Andrew C. Kadak

[Docket No. ID-2340-000]

Take notice that on May 2, 1988, Andrew C. Kadak tendered for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position and Public Utilities

Vice President, Yankee Atomic Electric Company
Vice President, Maine Yankee Atomic Power Company

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11508 Filed 5-20-88; 8:45 a.m.]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 18, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 6552-005.

c. *Date Filed:* January 20, 1988.

d. *Applicant:* HDI Associates and Fred Ehlers.

e. *Name of Project:* North Fork Sprague River.

f. *Location:* On the North Fork Sprague River in Klamath County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul Nolan, 6219 N. 19th Street, Arlington, VA 22205, (703) 534-5509.

i. *FERC Contact:* Dean Wight, (202) 376-9287.

j. *Comment Date:* June 27, 1988.

k. *Description of Amendment:* The licensee proposes to modify Article 23 of the license, which currently requires the release of the following continuous minimum flows from the project reservoir:

40 cubic feet per second (cfs) during the period of October 1 through June 30;
20 cfs from July 1 through July 31; and
15 cfs from August 1 through September 30;

or inflow to the reservoir, whichever is less. The proposed minimum flows are:
30 cfs during the period of October 1 through June 30;
20 cfs from July 1 through July 31; and
25 cfs from August 1 through September 30;

or inflow to the reservoir, whichever is less.

1. This notice also consists of the following standard paragraph: B, C, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. An comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS,", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11532 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 18, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 4597-004.

c. *Date filed:* April 11, 1988.

d. *Applicant:* Weber-Box Elder Conservation District and the City of Bountiful.

e. *Name of Project:* Pine View.

f. *Location:* On the Odgen River, in Weber County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791 (a)-825(r).

h. *Applicant Contact:* Ralph W. Bird, 471 W. 2nd Street Odgen, UT 84404 and

McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1406 L Street NW., Washington, DC 20005, (202) 371–5785.

i. *FERC Contact:* Hector M. Perez, (202) 376–1669.

j. *Comment Date:* June 12, 1988.

k. *Description of Project:* The Weber-Box Elder Conservation District (District) and the City of Bountiful (City) propose to transfer the license from the District to the District and the City to facilitate project financing and construction. The project is under construction. The proposed joint transferee is a Utah municipal corporation. The District and the City state that they will comply with all the applicable laws of the state of Utah as required by section 9(b) of the Federal Power Act.

1. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11533 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–380–000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

May 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88–380–000]

Take notice that on May 6, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–380–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Paragon Gas Corporation (Paragon), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated March 23, 1988, it proposes to transport natural gas on an interruptible basis for Paragon from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that the points of receipt are located in the states of Texas and Mississippi and the points of delivery are located in the states of Mississippi, Kentucky, New Hampshire, Massachusetts, West Virginia, Alabama, Louisiana, and Texas, with the ultimate delivery point being located in Massachusetts.

Tennessee further states that the maximum daily and annual quantities would be 40,000 dekatherms and 526,695 dekatherms, respectively, and that Paragon would be charged the rate set forth under Tennessee's Rate Schedule IT. Tennessee advises that service under § 284.223(a) commenced October 26, 1987, as reported in Docket No. ST88–3296 (filed April 26, 1988).

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88–384–000]

Take notice that on May 6, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88–384–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to modify one delivery point and appurtenant facilities to accommodate natural gas deliveries to Iowa Public Service Company (IPSC) under Northern's blanket certificate issued in Docket No. CP82–401–000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to modify the Dayton, Minnesota TBS No. 1, a town border station (TBS) located in Wright County, Minnesota. Northern states that IPSC has informed it that the subject TBS has expanded substantially in recent years, with a subsequent load increase due to additional residential, commercial, and industrial customers. Northern proposes to modify the existing TBS in order to serve the increased requirements of IPSC and its customers.

Northern states that such modifications will consist of the removal of one 6-inch turbine (T–30) meter and the installation of two 6-inch auto adjusts turbine (AAT–30) meters estimated to cost $120,000. Northern states that the meter capacity of the station will be increased to serve volumes up to 580 Mcf per hour.

Northern further states that the meter capacity of the existing facilities is 290 Mcf per hour.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88–372–000]

Take notice that on April 29, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–372–000 a request for authorization pursuant to § 284.205 of the Commission's Regulations under the Natural Gas Act and Applicant's blanket certificate issued in Docket No. CP87–115–000, to provide a transportation service for Mobil Oil Corporation, Mobil Oil Exploration and Producing Southeast, Inc., Mobil Producing Texas & New Mexico, Inc., and Mobil Exploration and Producing

North America, Inc. (Mobil), a producer, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated March 8, 1988, it would provide a transportation service through its compression facilities located in East Cameron Block 281, Offshore Louisiana.

The Applicant further states that the peak day quantities would be 27,000 dekatherms, the average daily quantities would be 968 dekatherms, and that the annual quantities would be 353,320 dekatherms. It is asserted that service under § 284.223(a) commenced March 17, 1988, as reported in Docket No. ST88-3223 (filed April 18, 1988).

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11509 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-373-000 et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

May 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-373-000]

Take notice that on May 3, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88-373-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval of the partial abandonment of a sales service to Michigan Gas Utilities Company (MGU), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to abandon the sale of 1,350 Mcf of natural gas per day to MGU, which represents 15 percent of MGU's daily contract quantity pursuant to its gas purchase contract with Trunkline. It is stated that MGU is an existing jurisdictional sales customer of Trunkline and that MGU has elected, in a letter dated December 31, 1987, to convert 15 percent of its daily contract quantity of purchased gas to firm transportation service pursuant to § 284.10 of the Commission's Regulations. It is explained that MGU requested in the letter that its daily contract quantity of purchased gas be reduced from 9,000 Mcf to 7,650 Mcf, with the remaining 1,350 Mcf being converted to firm transportation service effective March 1, 1988. It is further explained that Trunkline would provide such firm transportation service pursuant to Subpart B of section 284 of the Commission's Regulations.

Comment date: June 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Lawrenceburg Gas Transmission Corporation and Texas Gas Transmission Corporation

[Docket No. CP88-368-000]

Take notice that on April 29, 1988, Lawrenceburg Gas Transmission Corporation (LGT), 230 West High Street, Lawrenceburg, Indiana 47025, and the Texas Gas Transmission Corporation (Texas Gas) (jointly referred to as Applicants), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP88-368-000 an application pursuant to section 7 of the Natural Gas Act for authorization for LGT to abandon in place and by merger with Lawrenceburg Gas Company (LGC) the facilities of LGT and for Texas Gas to abandon sales service to LGT and to commence sales service to LGC, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that in Docket No. CP65-186 LGT was authorized to provide firm sales service to LGC and interruptible sales service to the Cincinnati Gas & Electric Company (CG&E). It is also stated that CG&E's service was converted to firm sales service in Docket No. CP75-370. It is stated that the LGT system was designed to couple LGC's desire to reduce its average unit purchase gas cost with CG&E's need for additional supplies. It is further stated LGT accomplished this by acquiring certain existing facilities from LGC which interconnected with the Texas Gas system, and constructed a two-mile extension of the existing system to a point of interconnection with the CG&E's distribution system at the Indiana-Ohio border.

Applicants state LGT currently provides firm sales service to LGC under Rate Schedule CDS-1 of its FERC Gas Tariff in amounts up to 12,240 Mcf per day, and to CG&E, in amounts up to 3,060 Mcf per day and that excess volumes can be supplied by LGT under Rate Schedule XS-1 to either customer provided that the total sales volume to both customers does not exceed LGT's 15,300 Mcf per day service agreement with Texas Gas. Finally it is indicated that excess interruptible supplies above the 15,300 Mcf per day combined limit are provided under Rate Schedule XS-2 and that transportation service is rendered for both CG&E and LGC under Rate Schedule TS.

Applicants aver that since July 1984, CG&E has purchased minimal amounts of gas from LGT on an annual basis and, instead, has relied on open-access transportation and a direct sales and transportation relationship with Texas Gas. As a result, LGT proposes to abandon its transmission facilities by their merger into the local distribution system of LGC. It is stated that the facilities originally owned by LGC would be reacquired by LGC in order to directly connect its local distribution system to the pipeline facilities of Texas Gas and that the additional facilities built by LGT to cross the Indiana-Ohio state line and interconnect with the facilities of CG&C would also be merged into LGC's local distribution system, with the exception of State Line Station, which would be abandoned in place.

LGT also proposes to abandon its sales service to LGC by assigning its above-described service agreement with Texas Gas to LGC at a reduced level of service as nominated by LGC. It is proposed that Texas Gas would provide LGC 11,000 MMBtu equivalent per day and 1,131,000 MMBtu equivalent annually under Rate Schedule G-4 of Texas Gas' FERC Gas Pipeline Tariff. Texas Gas would deliver gas to LGC under Rate Schedule G-4 at the delivery points that are presently used by Texas Gas to supply LGT. Applicants request an effecgtive date of November 1, 1988, for the proposed sale and related abandonment authorizations.

Comment date: June 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. East Tennessee Natural Gas Company

[Docket No. CP88–375–000]

Take notice that on May 4, 1988, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 3739–0245, filed in Docket No. CP88–375–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of natural gas to the City of Lawrenceburg, Tennessee (Lawrenceburg) and authority to construct and operate certain facilities to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

East Tennessee states that it has entered into a precedent agreement dated February 15, 1988, with Lawrenceburg, under which it proposes to serve Lawrenceburg pursuant to its existing CD–1 Rate Schedule with a proposed contract demand of 2,500 Mcf per day. It is stated that Lawrenceburg is a new customer and that East Tennessee would provide such service from the total supply of natural gas available to its system. It is further stated that East Tennessee has a contract demand with Tennessee Gas Pipeline Company for 325,719 Mcf per day. East Tennessee alleges that it proposes to utilize its existing storage service, currently under contract with Consolidated Gas Supply Corporation of 26,211 Mcf per day. It is further alleged that East Tennessee currently receives into its system 46,612 Mcf per day from States of Virginia and Tennessee.

To provide the proposed service to Lawrenceburg, East Tennessee proposes to construct 3.0 miles of 16 inch pipeline loop in Maury County south of Columbia, Tennessee and construct a measurement sales station at MLV 3203–1A near Summertown in Lawrence County, Tennessee. The total estimated direct and indirect cost of the proposed facilities to be constructed by East Tennessee is estimated to be $1,332,000. The facilities would be financed either from cash on hand or from funds generated with the Tenneco organization.

It is stated that East Tennessee proposes to commence the proposed new service for the 1988–89 heating season. It is further stated that because of the lead time necessary in ordering and receiving pipe and other materials, expeditious review and consideration of the application is necessary.

Comment date: June 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act, (18 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11510 Filed 5–20– 88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–451–000 et al.]

Northeast U.S. Pipeline Projects; Market Technical Conference and Settlement Discussions

May 18, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Market Technical Conference and notice of Settlement Discussions.

SUMMARY: On March 17, 1988, the Federal Energy Regulatory Commission (Commission) issued an Order Consolidating Applications and Prescribing Procedures (Procedural Order) in Docket No. CP87–451–004 (42 FERC ¶61,332 (1988)). That order indicated that a technical conference would be held to discuss the markets to be served by the pending proposals. In addition, numerous parties have requested that settlement be discussed. This notice identifies the dates and times of the Market Technical Conference and Settlement Discussions and the general topics of discussion.

DATES: The Market Technical Conference will be held on June 1, 1988, at 9:00 a.m., to continue on June 2, 1988, if necessary.

The Settlement Discussions will take place on June 3, 1988, at 9:00 a.m. Anyone interested person may attend; however, project proponents and other parties are asked to state their intention to attend by May 25, 1988.

ADDRESS: The conference and discussion will be held in a room to be announced at the: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Each project proponent, customer, and other interested party should file, by May 25, 1988, the name of the person who will represent it at the Market Technical Conference and/or the Settlement Discussions with: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the filing should also be made with the following designated staff contact.

FOR FURTHER INFORMATION CONTACT:

Market Technical Conference: George D. Dornbusch, Office of Pipeline and Producer Regulation, PR–21.2, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, (202) 357–9181

Settlement Discussions: Lee A. Alexander, Office of the General Counsel, GC–11.3, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–9176

Market Technical Conference

In the Procedural Order, the Commission consolidated the pending applications to serve Northeast markets into 31 distinct projects. The Commission made a preliminary determination that 20 of those projects appear to be competitive with each other, in whole or in part. The Commission also indicated that the

Eastern American States Transmission Company (EASTCO) project appears to be a competitive project. The Commission stated that, absent further market data, these projects appear to involve common disputed issues of law and material fact and therefore may be entitled to a comparative evidentiary hearing. The Commission further stated that—

> No final determination is made at this stage as to whether an individual Northeast customer has or can show a need for more than one project. If such a showing is made, we may determine that the proposals to serve that customer are not, in fact, mutually exclusive.[1]

As further specified in the Procedural Order, the Commission will hold technical conferences on various topics relating to the Northeast project filings. The Commission indicated that the purpose of the technical conferences "will be to narrow the range of material issues of fact that are in dispute, to the maximum extent possible, to ensure that evidentiary hearings will be conducted in an expeditious and efficient manner."[2] The Market Technical Conference is an opportunity for the parties to explore and further clarify the market needs of the customers who would be served by the proposed Northeast projects. It is also an opportunity for the project proponents and/or their customers to make the market showing, as anticipated by the Commission in the Procedural Order, that more than one project may be needed for a given customer or group of customers. The proponents of and each customer that would be served by one of the 20 Northeast projects identified by the Commission in its Procedural Order as appearing to be competitive and EASTCO are requested to participate in the Market Technical Conference.

The Market Technical Conference will follow a format whereby, after opening comments by Staff, each project sponsor will be allotted 10 minutes to discuss in general the market data for its project. Each project sponsor should address the following points:

(1) The reasons for any omissions of any elements in the market data filed supporting the application or in response to Commission Staff's March 21, 1988 market data request.

(2) Any inconsistencies between the market data and the information contained in the application.

(3) Whether the market data shows an incremental need for the project in light of apparently mutually exclusive proposals to serve the same customers.

(4) the exact name and location of each customer.

Following the project sponsors, each customer will be allotted 10 minutes to discuss its individual market requirements. Each customer should address the following points:

(1) The reasons for any omissions of any elements in the market data filed in response to Commission Staff's March 21, 1988 market data request.

(2) Whether the customer shows a need for all the projects that are proposed to serve that customer.

(3) Whether, and if so, why the customer needs more than one of the proposed Northeast projects and how the customer ranks the projects in order of preference.

Following the customer presentations, each other interested party will also be allotted 10 minutes to present its views.

The order of presentation of the project sponsors will be as listed in Appendix A of the Procedural Order, followed by EASTCO. The order of presentation of the customers and of any order interested parties will be announced at the conference.

The Staff requests that any parties who have not submitted complete responses to the March 21, 1988 market data request do so as soon as possible to allow Staff sufficient time to review the responses before the conference. The parties should be prepared to clarify and answer any questions pertaining to the market data responses.

A stenographer will prepare a transcript of the Market Technical Conference, which will be available in the public file for these proceedings in the Commission's Public Reference Room. The transcript may also be ordered from the reporting company. Additional procedures may be announced by the Staff at the conference.

Settlement Discussions

The Commission has received numerous requests for settlement discussions. Accordingly, there will be an opportunity, on June 3, 1988, following the Market Technical Conference, for parties to discuss settlement and to consider joint venture proposals to provide new gas service to the Northeast.

Project proponents may participate in the discussions, and are encouraged to try to develop proposals that simplify and consolidate various projects and eliminate any unnecessary or duplicative projects. As in the case of other settlement discussions, any offer of settlement that is not accepted, and any comment on that offer, is not admissable in evidence. Of course, the Commission will examine and determine whether any proposed settlement should be approved. Any party filing an intent to participate in these discussions may, at the time of the filing, suggest procedures that can be used to make the discussions as efficient and productive as possible.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11511 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[1] 42 FERC ¶61,332 (1988) at 61,947.

[2] *Id.* at 61, 948.

[Docket No. CP87-4-002]

PennEast Gas Services Co. and Texas Eastern Transmission Corp.; Amendment to Application

May 17, 1988.

Take notice that on May 13, 1988, PennEast Gas Service Company (PennEast) and Texas Eastern Transmission Corporation (Texas Eastern), jointly referred to as Applicants, Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87-4-002 an amendment to PennEast's application filed on October 2, 1986 in Docket No. CP87-4-000, as amended on March 9, 1988 in Docket No. CP87-4-001, pursuant to section 7(c) of the Natural Gas Act, to reflect a modification of the design and further relocation of the site for the proposed Leidy line compressor station, and to adjust the proposed rates to reflect the revised facilities cost, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that, in the original application, PennEast requested authorization to provide jurisdictional sales and transportation of gas on a firm basis for a primary term of 20 years to five local distribution companies located in New York and New Jersey pursuant to proposed Rate Schedules SS-1 and T-1 in two phases, Phase I commencing November 15, 1987, of up to 100,000 dt equivalent per day and Phase II commencing November 15, 1988 until termination, of up to 245,000 dt equivalent per day. Further, Applicants state that PennEast proposed to construct and operate facilities, including a 3,500 HP compressor station near mile post 36.25 on Texas Eastern's existing Line No. 24, under Phase I and Phase II. It is indicated that PennEast also sought a Blanket Certificate pursuant to § 284.221 of the Commission's Regulations.

Applicants indicated that, on November 2, 1987, PennEast filed a Notice of Partial Withdrawal of Application, withdrawing its request for Phase II facilities. It is submitted that the request for Phase II facilities authorization is now requested in Docket No. CP87–92–002.

Applicants further state that, on March 9, 1988, PennEast and Texas Eastern filed an amendment to the original application to reflect a modification of the ownership structure of the proposed facilities, to include Texas Eastern as an applicant to render a compressor and metering service to PennEast, and to relocate the site for the proposed 3,500 horsepower (HP) compressor station from mile post 36.25 on Texas Eastern's Line No. 24 (designated Center Hall Compressor Station) to mile post 18.50 on Texas Eastern's Line No. 24 (redesignated Belleville Compressor Station).

It is indicated that Applicants have encountered delays in securing timely local authorization for the Belleville site and anticipates similar delays at any other new site. PennEast proposes and requests authorization to install a 4,785 HP gas turbine and compressor at Texas Eastern's Perulack Compressor Station, Juniata County, Pennsylvania. Applicants state that the proposed compressor, redesignated the Leidy Compressor, is located adjacent to Texas Eastern's Perulack Compressor Station on Texas Eastern property. Applicants further state that the selected location has never been used for operational purposes, but was previously the site of company employees' living quarters.

It is submitted that Applicants would be required, as a result of installing the compressor at Perulack, to upgrade the previously proposed 3,500 HP unit to 4,785 HP.

Applicants state that PennEast has revised the estimated facilities cost to reflect increases resulting from the location of the compressor at Perulack and adjustments to the original cost estimates to reflect current costs. The revised estimated cost is $46,602,000.

Applicants indicate that Texas Eastern would, pursuant to the terms of the Gas Compression and Metering Agreement, as amended, operate the proposed facilities. Texas Eastern requests that the rates shown in revised Exhibit P, Schedule 8, which sets out the incremental operating and maintenance expense to be charged PennEast by Texas Eastern, be accepted as initial rates for such compression and metering service.

Any person desiring to be heard or to make any protest with reference to said amendment should be on or before May 31, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11432 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–17–009]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 18, 1988.

Take notice that on May 13, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987:

Third Revised Sheet No. 30Y,
Third Revised Sheet Nos. 30QQ–30RR.

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. The Commission issued its Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Convening Technical Conference and Granting Late Interventions on November 27, 1987, pursuant to which Southern filed revised tariff sheets on December 14, 1987. On March 1, 1988, the Commission issued its Order Accepting Partially Granting Rehearing, Accepting Compliance Filing Subject to Conditions, and Establishing Hearing pursuant to which Southern filed revised tariff sheets on March 16, 1988. The Office of Pipeline and Producer Regulation issued a Letter Order dated April 29, 1988, (Letter Order) which rejected certain revised sheets and directed Southern to file revised tariff sheets within 15 days of such Letter Order. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11433 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–96–001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 18, 1988.

Take notice that on May 13, 1988, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets to its FERC Gas Tariff to be effetive June 1, 1988.

Southern states that the proposed tariff sheets are being filed in compliance with the Commission's April 29, 1988 order in the above-captioned proceeding accepting Southern's proposed recovery of a portion of its buy-out and buy-down costs pursuant to the procedures established in the Commission's Order No. 500.

Southern state that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a notion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 254, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make potestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11434 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–160–001]

Transcontinental Gas Pipe Line Co.; Correction to Filing

May 18, 1988.

Take notice that on May 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed Fourth Revised Sheet No. 250–A as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1988. Transco states that this tariff sheet was inadvertantly misnumbered as Sixth Revised Tariff Sheet No. 250–A in its May 2, 1988 filing. Transco respectfully requests that Fourth Revised Sheet No. 250–A be substituted for the misnumbered sheet filed on May 2, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11435 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ88–1–35–001 and RP88–164–000]

West Texas Gas, Inc.; Correction to Filing

May 18, 1988.

Take notice that on May 10, 1988, West Texas Gas, Inc. (WTG) filed Substitute Ninth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, corrected page 1 of 2 of Schedule Q1 and corrected page 1 of 2 of Schedule D1. WTG states that these sheets contain minor corrections to the corresponding sheets submitted on May 3, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11436 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59260; FRL–3383–4]

Toxic and Hazardous Substances; test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

Written comments by: T 88–11, 88–12, June 2, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS–59260)" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 88–11

Close of Review Period. June 16, 1988.

Manufacturer. Confidential.

Chemcial. (G) Thiocarbamyl substituted sulfonamide.

Use/Production. (S) Resin for inks. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5g/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

T 88–12

Close of Review Period. June 15, 1988.

Manufacturer. Confidential.

Chemical. (G) Acitified epoxy resin.

Use/Production. (S) Confidential. Prod. range: 2000 kg/yr.

Date: May 16, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–11448 Filed 5–20–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Meeting

1. The Advisory Committee will hold its second meeting on: June 3, 1988, 2:00 p.m., 1919 M Street NW., Washington, DC 20554, Room 856.

2. The agenda of the meeting is as follows:

a. Introductory remarks
b. Progress reports by—
   Joseph Flaherty, Chairman, Planning Subcommittee
   Irwin Dorros, Chairman, Systems Subcommittee
   James Tietjen, Chairman, Implementation Subcommittee
c. Operating cash fund/funding guidelines
d. Interim report to be submitted to the Federal Communications Commission
e. Future work
f. Concluding remarks by Richard Wiley, Chairman of the Advisory Committee

3. This meeting is open to the public.

4. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussions by non-Committee attendees may be permitted at the discretion of the Chairman.

5. Inquiries regarding this meeting should be directed to William Hassinger at (202) 632–6460.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–11524 Filed 5–20–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Brimark Broadcastng et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Brian D. Warner and Mark D. Humphrey d/b/a/ Brimark Broadcasting, Vestal, NY.	BPH–870330MR	88–224
B. Vestal Community Broadcasters, Inc., Vestal, NY.	BPH–870331MC	.....
C. Mary C. Murray, Vestal, NY.	BPH–870331MH	.....
D. David G. Mitchell, Vestal, NY.	BPH–870331MJ	.....
E. Molly A. Waltman, Vestal, NY.	BPH–870331MR	.....
F. Wiltshire Broadcast Co., Vestal, NY.	BPH–870331OT	.....
G. Carol A. Morgan, Vestal, NY.	BPH–870422MD	.....
H. Sherlock-Hart Broadcasting, Inc., Vestal, NY.	BPH–870422MH	.....
I. KRB Associates, Vestal, NY.	BPH–870422MK	.....
J. Manuel Angelo, Vestal, NY.	BPH–870330MW [1]	.....
K. John Anthony Bulmer, Vestal, NY.	BPH–870421MB [1]	.....

[1] Dismissed herein.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. Comparative, A–I
2. Ultimate, A–I

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11530 Filed 5–20–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Empire Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Empire Broadcasting, Inc. Sioux Falls, SD.	BPH–870311MB	88–213
B. Samcon, Ltd. Partnership, Sioux Falls, SD.	BPH–870311MC	.....
C. Nehemiah Radio Productions, Inc., Sioux Falls, SD.	BPH–870311MD	.....
D. Kirkwood Broadcasting, Inc., Sioux Falls, SD.	BPH–870311MK	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Multiple Ownership, D
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11525 Filed 5–20–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Great Lakes Radio Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Great Lakes Radio Corp., Mt. Pleasant, MI.	BPH-861001SZ	88-207
B. Central Michigan Communications, Inc., Mt. Pleasant, MI.	BPH-861002TZ	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11526 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Timothy D. Martz et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Timothy D. Martz, Cape Vincent, NY.	BPH-870817MH	88-209
B. David J. Alteri et al., d/b/a Cape AL, Broadcasting Ltd., Cape Vincent, NY.	BPH-870819ND	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11528 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; W.B. Moore, Jr. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. W.B. Moore, Jr., Lebanon, VA.	BPH-861001SY	88-211
B. J.T. Parker Broadcasting Corp., Lebanon, VA.	BPH-861001TB	.....
C. Yeary Broadcasting, Inc.	BPH-861001TC	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347, (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A-C
2. Ultimate, A-C

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11529 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Spanish Aural Services Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Roy E. Henderson d/b/a Spanish Aural Services Co., South Padre Island, TX.	BPH-850712R1	88-212
B. Betty Howell, South Padre Island, TX.	BPH-850712S9	.....
C. R&C Minority Telecommunicate Inc., South Padre Island, TX.	BPH-850712U6	.....
D. Nina Jean Rubinsky, South Padre Island, TX.	BPH-850709M0 [1]	.....
E. Michele Sanchez, South Padre Island, TX.	BPH-850711PR [1]	.....
F. Mr. Robert G. Kerrigan, South Padre Island, TX.	BPH-850712Q9 [1]	.....
G. Island Radio of Texas, South Padre Island, TX.	BPH-850712S7 [1]	.....

[1] Previously dismissed.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant

1. Environmental, B
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11527 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council Sub-committee; Meeting

AGENCY: Federal Home Loan Bank Board, 1700 G Street N.W., Washington, DC 20552.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth dates of forthcoming meetings of the Federal Savings and Loan Advisory Council Sub-committees. Notice of the meetings are required under the Federal Advisory Committee Act.

DATE(S): Investment Banking Sub-committee—June 1, 1988; 9:00–12 noon; FHLB of New York, One World Trade Center, New York, New York.

Legal Issues Sub-committee—June 1, 1988; 2:30–6:00 p.m.; FHLBB, 1700 G Street, NW., Washington, DC.

Legal Issues Sub-committee—June 3, 1988; 8:00–12 noon; FHLB of Chicago, 111 East Wacker Drive, Chicago, Illinois.

Emerging Issues Sub-committee—June 7, 1988; 8:30–4:30 p.m.; FHLBB, 1700 G Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John M. Buckley, Jr., (202) 377–6577, Debra J. Ahearn, (202) 377–6924.

John M. Buckley, Jr.,

Secretary.

May 18, 1988.

[FR Doc. 88–11452 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–714; FHLBB No. 5306]

Apollo Savings and Loan Co., Cincinnati, OH; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Apollo Savings and Loan Company, Cincinnati, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11457 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–717; FHLBB No. 8308]

Baltimore American Savings Bank, F.S.B., Baltimore, MD; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Baltimore American Savings Bank, F.S.B., Baltimore, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11458 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–713; FHLBB No. 6280]

First Federal Savings and Loan Assocation of Hopkins County, Madisonville, KY; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Hopkins County, Madisonville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11459 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–715; FHLBB No. 7262]

First Federal Savings and Loan Association of McNairy County, Selmer, TN; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of McNairy County, Selmer, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000

Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88–11460 Filed 5–20–88; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–712; FHLBB No. 5482]

First Federal Savings and Loan Association of Okaloosa County, Fort Walton Beach, FL; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 11, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Okaloosa County, Fort Walton Beach, Florida for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88–11456 Filed 5–20–88; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–716; FHLBB No. 6353]

Poinsett Federal Savings and Loan Association of Travelers Rest, Travelers Rest, SC; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Poinsett Federal Savings and Loan Association of Travelers Rest, Travelers Rest, South Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88–11461 Filed 5–20–88; 8:45 am]
BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreements(s) Filed

The Federal Maritime Commission herby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010270–027.
Title: Gulf-European Freight Association.
Parties:
Compagnie General Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirement's concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 202–010656–027.
Title: North Europe-U.S. Gulf Freight Association.
Parties:
Compagnie General Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirement's concerning Service Contract provisions. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: May 18, 1988.
Joseph C. Polking,
Secretary.
[FR Doc. 88–11481 Filed 5–20–88; 8:45 am]
BILLING CODE 6730–01–M

Agreements(s) Filed

The Federal Maritime Commission herby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washigton, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Instrested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200118.
Title: South Carolina State Ports Authority Terminal Agreement.
Parties:
South Carolina State Ports Authority (Authority)
Maersk, Inc. (Maersk)

Synopsis: The agreement establishes authority to provide Maersk 49.13 acres of land for container shipping operations with a single consolidated rate for services provided to Maersk by the Authority.

Agreement No.: 224–200117.
Title: New York and New Jersey Terminal Agreement.
Parties:
The Port Authority of New York and New Jersey (The Port)
Atlantic Container Line BV (ACL)

Synopsis: The proposed amendment provides for ACL to lease from the Port certain terminal space comprising berthing, wharf and upland area located at the Elizabeth-Port Authority Marine Terminal, City of Elizabeth, New Jersey.

Agreement No.: 224–200116.
Title: South Carolina State Ports Authority terminal Agreement.
Parties:
South Carolina State Ports Authority
ACT–Columbus (Associated Container
Transport (USA) and Columbus Line)

Synopsis: The agreement provides ACT-Columbus with eight acres at the Authority's North Charleston Terminal to be used as a container holding area. The agreement also provides ACT-Columbus with reduced wharfage rates for specified container cargo volumes.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 18, 1988.

[FR Doc. 88-11482 Filed 5-20-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Glodevan Int'l Transport, Inc., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Glodevan Int'l Transport Inc., 2721 Tulip Tree Lane, Rowland Heights, CA 91748. Officers: Werther L. J. Fan, President, Liang Kwang Fan, Director, Liang-Chih Fan, Secretary, Liang-Chen Fan, Director.

EX-IM Services Corporation, 16333 West Hardy Road, Houston, TX 77060. Officers: Refugio Gonzales, Jr., President, Santa S. Gonzales, Chairman, Dir. Stockholder.

Intermove Ltd., 1200 Main Street, Bridgeport, CT 06604. Officer: Kenneth M. Mercado, President.

Kremer International Transport, Inc., 1720 Westpark Center Dr., Suite D (P.O. Box 470), Fenton, MO 63026. Officers: Charles R. Kremer, President, Kathleen M. Kremer, V. President/Treas., Stephen D. Hoyne, Secretary.

Etters International, 2077 Airport Dr., Green Bay, WI 54313. Officer: Leslie G. Etters, Jr., Sole Proprietor.

American Cargo International, 6621 NW 84 Avenue, Miami, FL 33166. Officers: Santiago E. Rodriguez, President, Otto Morelli, Vice President.

Border Enterprises Inc., 660 Plaza Dr., Suite 2350, Detroit, MI 48226. Officer: Charles D. Ford, Vice President.

Total Transport Services Inc., 103-08 180th Street, Jamaica, New York 11733. Officers: Michael Casamassima, President, James Woehr, Secretary/Treasurer.

Fidelity Transport, Inc., 13419 Pumice Street, Norwalk, CA 90650. Officers: Dong Joon, Pyun, President, Sung Taek, Rhim, Director.

Cap International, Inc., 3047 Air Freight Rd., Houston, TX 77032. Officers: Mauricio Capriles, President, Giocasta Capriles, Vice President.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 18, 1988.

[FR Doc. 88-11483 Filed 5-20-88; 8:45 a.m.]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Baltimore Bancorp; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Baltimore Bancorp*, Baltimore, Maryland; to engage *de novo* through its subsidiary, Atlantic Appraisal Company, Inc., Baltimore, Maryland, in performing appraisals for Applicant's affiliates and for third parties for which fees will be charged. While Company's major activities will relate to residential mortgage appraisals, it will also be involved in appraisals of commercial real estate and personal property interests pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11421 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

Change in bank Control; Acquisition of Shares of Banks or Bank Holding Companies; James Black

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James Black*, Harley Bovee, T.C. Chilvers, H.L. Gerhart, all of Pierce, Nebraska, and Kenneth Nordlund, York, Nebraska; to each acquire an additional 5.7 percent of the voting shares of The Pierce Corporation, Pierce, Nebraska, and thereby indirectly acquire Cones State Bank, Pierce, Nebraska.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11422 Filed 5–20–88; 8:45 am]

BILLING CODE 6210–01–M

The First Jermyn Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Co's.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *The First Jermyn Corp.*, Jermyn, Pennsylvania; to merge with First Jessup Corp., Jessup, Pennsylvania, and thereby indirectly acquire First National Bank of Jessup, Jessup, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First United Bancshares, Inc.*, El Dorado, Arkansas; to acquire 100 percent of the voting shares of First City Corp., Fort Smith, Arkansas, and thereby indirectly acquire City National Bank of Fort Smith, Fort Smith, Arkansas.

2. *Market Street Bancshares, Inc.*, McLeansboro, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of Peoples National Bank, McLeansboro, Illinois.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11423 Filed 5–20–88; 8:45 am]

BILLING CODE 6210–01–M

Otto Bremer Foundation and Bremer Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Otto Bremer Foundation and Bremer Financial Corporation*, St. Paul, Minnesota; to acquire certain assets from their subsidiary bank in Willmar, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Willmar, Minnesota.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11424 Filed 5–20–88; 8:45 am]

BILLING CODE 6210–01–M

Wright Bancgroup Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 2, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Wright Bancgroup Company*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas Bancorp Shares, Inc., San Antonio, Texas, and thereby indirectly acquire Texas Bank, San Antonio, Texas, and Texas Bank North, N.A., San Antonio, Texas.

Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11623 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the permerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquistions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 5/3/88 AND 5/13/88

Name of acquiring person; Name of acquired person; Name of acquired entity	PMN No.	Date terminated
Marlis S.A.; Diamandis Communications, Inc.; Diamandis Communications, Inc	88-1420	5/3/88
The Moses H. Cone Memorial Hospital; Humana, Inc; Humana of North Carolina, Inc., Edison Homes-Southeast	88-1299	5/4/88
Odyssey Partners; West Point-Pepperell, Inc.; West Point-Pepperell, Inc	88-1333	5/4/88
Mobil Technology Inc.; MEDIQ Inc.; MEDIQ Mobile Services, Inc	88-1396	5/4/88
James W.F. Brooks; The Prudential Insurance Co. of America; Beverage Management, Inc	88-1427	5/4/88
David T. Shelby (88-1428) & Jack D. Rutherford (88-1431); Kendavis Holding Co.; Unit Rig & Equipment Co	88-1428	5/4/88
Jack D. Rutherford; Kendavis Holding Co.; Unit Rig and Equipment Co	88-1431	5/4/88
Franklin Savings Corp.; L.F. Rothschild Holdings, Inc.; L.F. Rothschild Holdings, Inc	88-1444	5/4/88
TPR Investments Partners; David W. Elmquist, ("Trustee"); Lundberg Industries, Inc	88-1481	5/4/88
Tele-Communications, Inc.; William W. McDonald (88-1284) & Allan J. McDnld. (88-1289); Waterloo Cablevision, Inc.; Cedar Falls Cablevisions	88-1284	5/5/88
Tele-Communications, Inc.; Allan J. McDonald; Waterloo Cablevision, Inc.; Cedar Falls Cablevisions	88-1289	5/5/88
United Meridian Corp.; Ensource Inc; Ensource Inc	88-1296	5/5/88
Advanced Telecommunications Corp.; Microtel, Inc.; Microtel, Inc	88-1314	5/5/88
Argus Energy, L.P.; Tosco Corp.; Tosco Corp	88-1338	5/5/88
Welsh, Carson, Anderson & Stowe IV; Avantek, Inc., Transmission Systems Division	88-1340	5/5/88
International Multifoods Corp.; Prepared Foods, Inc.; Prepared Foods, Inc	88-1365	5/5/88
General Motors Corp.; Roger S. Penske; Penske Cadillac of California, Inc	88-1438	5/5/88
Ronald E. Scherer; David Liebowitz; Imperial News Co., Inc	88-1477	5/5/88
Voting trust, 12/08/88 of Hallmark Cards, Inc., Kansas City Southern Industries, Inc.; Kansas City Southern Industries, Inc	88-1343	5/6/88
Wayne Reeder; Sequa Corp.; Chromalloy American Insurance Group, Inc	88-1381	5/6/88
Leon Fink; James M. Stoneman; Interstate Theatres Corp	88-1390	5/6/88
Borden, Inc.; Di Giorgio Corp.; Di Giorgio Corp	88-1400	5/6/88
Unilever N.V., Unilver PLC; Sequoia Turner Corp.; Sequoia Turner Corp	88-1437	5/6/88
Glenn R. Jones; Cable TV Fund 11-A, Ltd.; Cable TV Fund 11-A, Ltd	88-1462	5/6/88
Leggett & Platt, Inc.; Pacific Dunlop Limited; Pacific Dunlop Foam Corp. and L & P Foam	88-1463	5/6/88
Donald J. Trump; Robert M. Bass; Plaza Operating Partners, Ltd	88-1471	5/6/88
United Meridian Corp.; Charles E. Hurwitz; MCO Resources, Inc	88-1480	5/6/88
ManTech International Corp.; Northrop Corp.; Northrop Services, Inc	88-1489	5/6/88
Southmark Corp.; Citicorp; Citicorp Mortgage, Inc	88-1490	5/6/88
Hawker Siddeley Group Public Limited Co.; ATI Holding, Inc., c/o American Technologies, Inc.; von Weise Gear Co	88-1493	5/6/88
Forbes Healthmark; Bethesda Foundation; Bethesda Foundation	88-1496	5/6/88
Frederick G.E. Scheer; Donald G. Geary; Affordable Inns, Inc	88-1503	5/6/88
Coloroll Group PLC; John Crowther Group PLC; John Crowther Group PLC	88-1504	5/6/88
Daniel W. Gardner; Milton G. Waldbaum; Milton G. Waldbaum Co., Gardwal Realty Co	88-1505	5/6/88
Atwood Resources, Inc., Park-Ohio Industries, Inc.; Park-Ohio Energy, Inc	88-1510	5/6/88
Amoco Corp.; Citation Investment Trust; Citation 1987 Investment Limited Partnership	88-1511	5/6/88
Societe Nationale Elf Aquitaine; Pennzoil Co.; Pennzoil Nederland Co, Inc	88-1513	5/6/88
BASF Aktiengesellschaft; Pennzoil Co.; Pennzoil Nederland Co., Inc	88-1514	5/6/88
Itel Corp.; Rex-Noreco, Inc.; Rex-Noreco, Inc	88-1515	5/6/88
Mr. Yasuo Ii; Ronald L. Fenolio; IDG Realty, Ltd	88-1521	5/6/88
W.R. Grace & Co.; USX Corp.; USX Corp	88-1372	5/10/88
Martin D. Gruss; Acme Steel Co.; Acme Steel Co	88-1391	5/10/88
ConAgra, Inc.; Amfac, Inc.; Lamb-Weston, Inc	88-1412	5/10/88
Golden Valley Microwave Foods, Inc.; Amfac, Inc.; Lamb-Weston, Inc	88-1412	5/10/88
Golden Valley Microwave Foods, Inc.; L.W. Acquisition, Inc.,; L.W. Acquisition, Inc	88-1413	5/10/88
ConAgra, Inc.; L.W. Acquisition, Inc.; L.W. Acquisition, Inc	88-1415	5/10/88
Dr. Pepper/Seven-Up Companies, Inc.; Dr. Pepper Holding Co.; Dr. Pepper Holding Co	88-1425	5/10/88
Dr. Pepper/Seven-Up Companies, Inc.; Seven-Up Holding Co.; Seven-Up Holding Co	88-1426	5/10/88
Peter R. DeGeorge; Insilco Corp.; Plymouth Capital Co., Inc. & Miles Home Division	88-1498	5/10/88
American Express Co.; Tishman West Management Corp.; Tishman West Management Corp	88-1501	5/10/88
York International Corp.; Temperature Industries, Inc.; Temperature Industries, Inc	88-1527	5/10/88
BBA Group plc; Permodian Nasional Berhad; The Guthrie Corp., plc	88-1402	5/11/88
The Walt Disney Co.; Marlis S.A.; Childcraft Education Corp	88-1439	5/11/88
Kao Corp.; American Brands, Inc.; The Andrew Jergens Co	88-1446	5/11/88
Samuel J. Heyman; GAF Corp.; GAF Corp	88-1450	5/11/88
Ratners Group plc; William N. Osterman; Osterman's Inc	88-1476	5/11/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 5/3/88 AND 5/13/88—Continued

Name of acquiring person; Name of acquired person; Name of acquired entity	PMN No.	Date terminated
Stora Kopparbergs Bergslags AB; Swedish Match AB; Swedish Match AB	88-1483	5/11/88
Consolidated Electrical Distributors, Inc.; Amfac, Inc.; Amfac Electrical Supply Co	88-1491	5/11/88
Paul Schaub; Hoechst Aktiengeseilschaft; Hoechst Aktiengesellschaft;	88-1492	5/11/88
AB Artimos; Incentive AB; Abu AB and Abu Garcia Group, Inc	88-1494	5/11/88
Incentive AB; AB Artimos; AB Aritmos	88-1495	5/11/88
Sharon Steel Corp.; Wheeling-Pittsburgh Steel Corp.; Wheeling-Pittsburg Steel Corp	88-1488	5/12/88
David L. Goldman; Textron Inc.; Bryant Grinder Corp	88-1341	5/13/88
Schnitzer Steel Products Co; Leo V. Berger; Leo V. Berger	88-1445	5/13/88
Schnitzer Steel Products Co.; Arc Shipping, L.P.; Arc Shipping, L.P.	88-1451	5/13/88
Schnitzer Steel Products Co.; Aurora Marine Co., L.P.; Aurora Marine Co., L.P	88-1452	5/13/88
Royal Dutch Petroleum Co. (Shell Oil Co.); The J.E. and L.E. Mabee Foundation Inc.; Mabee Petroleum Corp	88-1475	5/13/88
North Star Universal, Inc.; Daniel W. Gardner; Milton G. Waldbaum Co	88-1506	5/13/88
Finmeccanica Societa Finanziaria P.A.; D.U. Howard and Georganna Howard (husband & wife); The Dee Howard Co	88-1517	5/13/88
Wayne Reeder; Western Health Resources; Diamond Benefits Life Insurance Co	88-1532	5/13/88
Wayne Reeder; Adventist Health System/Sun-belt Healthcare Corp.; Diamond Benefits Life Insurance Co	88-1533	5/13/88
Kenneth R. Thomson; The Post Holding Co., Inc.; The Post Holding Co. Inc	88-1537	5/13/88
Polysar Energy & Chemical Corp.; Savin Corp.; Savin Corp	88-1539	5/13/88
Donna Wolf Steigerwaldt; Nantucket Industries, Inc.; Nantucket Hosiery Mills Corp	88-1543	5/13/88
Centel Corp.; Advanced Telecommunications Corp.; Advanced Telecommunications Corp	88-1546	5/13/88
Boston Ventures Limited Parnership II; Columbia Pictures Entertainment, Inc.; Columbia Pictures Industries, Inc., Columbia Lady	88-1548	5/13/88
Irish Life Assurance plc; Central Life Assurance Co.; Inter-State Assurance Co	88-1551	5/13/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 5/3/88 AND 5/13/88—Continued

Name of acquiring person; Name of acquired person; Name of acquired entity	PMN No.	Date terminated
Pernod Ricard S.A.; Gaspare P. Ferro, a natural person; Yoo-Hoo Industries, Inc	88-1557	5/13/88
Saatchi & Saatchi Co. PLC; Nicholas Costa; CPC Delaware Co., Inc	88-1561	5/13/88
Durham Corp.; Kaufman and Broad, Inc., Sun Life Insurance Company of America	88-1574	5/13/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-11440 Filed 5-20-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Social Services Policy; Applications for Grants; Long Term Care Research

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of long term care from states, public, non-profit and for-profit organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and analysis pertaining to long term care for the functionally impaired elderly and for mentally retarded or developmentally disabled (MR/DD) persons.

A subsidiary objective is to promote the use of publicly available Departmental data bases in long term care. Computerized data from other sources may also be used. However, no new data collection will be supported.

The Department seeks to advance the state of knowledge principally in the following issue areas: (a) Long term care financing (b) catastrophic burdens on long term care clients (c) long term care supply and demand (d) patterns of service use and client outcomes (e) nursing homes (f) home and community-based services (g) informal caregiving and (h) characteristics of persons with long term care needs.

These issue areas may be combined and other areas may be proposed if they are clearly demonstrated to be relevant to long term care. The following sections list the kinds of questions envisioned under each issue area.

1. Issue Areas

a. Long Term Care Financing

How much money is spent from what payment sources on long term care and how is it distributed among various institutional and community service modes? How will this change over the next 20–40 years based on both current trends and alternate assumptions regarding mortality, morbidity, and available caregivers? What variations in long term care expenditures exist across states and what accounts for them?

What are projected participation rates and public and private expenditures for long term care based on alternate policy scenarios, e.g. Medicaid restructuring, comprehensive entitlement, growth of private insurance and tax incentives? How sensitive are long term care expenditures to various cost-sharing options?

b. Catastrophic Burdens on Long Term Care Clients

How many chronically impaired persons with what characteristics experience financially catastrophic health and long term care expenditures? What factors result in catastrophic financial burdens? What percent of people experience catastrophic home care expenditures as opposed to nursing home expenditures and what are their characteristics? What impact do high out-of-pocket costs have on Medicaid participation, living arrangements, and the quality of life of impaired persons?

Who spends down to Medicaid eligibility, how does this occur and what the the policy implications? In particular, what are the characteristics of persons who spend down in the community and in nursing homes? How long does it take? What proportion of income and assets are applied to Medicaid service costs? Does the "spend down" population own their homes? What is the value of such homes and what happened to the equity in their homes prior to becoming Medicaid-eligible?

To what extent can high out-of-pocket expenditures be reduced by private long-term care insurance? What is the effect on out-of-pocket expenditures of such private financing options as continuing care retirement communities,

home equity conversions, employee benefit options for retirees, and social health maintenance organizations? Who are likely to participate in these various options? What are the effects of projected participation rates on public programs?

c. Long Term Care Supply and Demand

How does the supply of nursing home beds and community-based services affect the use of these types of care? How will the demand for long-term care services be affected by the growth of the impaired elderly and MR/DD populations? What factors are associated with different patterns of service use? What determines the decision to institutionalize an individual?

To what extent are long term care recipients and their caregivers aware of available services and financing options? To what extent are long term care needs being met satisfactorily and what service gaps persist? What accounts for differences in costs and prices charged among institutional and non-institutional services?

d. Patterns of Service Use and Client Outcomes

Who uses long term care services? What characteristics distinguish institutional and community service users? What distinguishes short-stay and long-stay nursing home residents? Can this pattern of service use be predicted at entry? What client outcomes are associated with different patterns of service use? What accounts for different service use patterns across states and localities? What is the relative impact of factors like supply, costs and user characteristics on these patterns?

e. Nursing Homes

What is the relative impact on nursing home use of such factors as: (a) Nursing home bed supply; (b) availability of formal community-based services; (c) patient characteristics; (d) caregiver characteristics; and (e) costs of services? In light of these (or other) factors, how can one identify target groups of persons at high risk of nursing home placement? What are the number and characteristics of MR/DD nursing home residents compared to functionally impaired elderly residents?

f. Home and Community-Based Services

Describe the types, patterns and costs of formal community service use. What are the characteristics of community service users? What are the characteristics of service provider organizations and their personnel? Under what conditions can lower levels of service substitute for a higher level of care (e.g. homemaker for home health services or board and care settings for nursing home care)? What variations in community service use exist by subgroups of long term care recipients, geography or other factors?

Describe the role of case management in increasing access to formal community services. Which models of case management appear most effective in increasing access, assuring quality and controlling costs?

g. Informal Caregiving

What is the extent of informal caregiving? Is it changing over time? How does the availability of formal services affect the sources, types and levels of informal care provided? To what extent does substitution of formal for informal care occur? What are the characteristics of caregivers and recipients associated with substitution? What formal services do informal caregivers view as most important?

What are the characteristics of informal caregivers? To what extent is informal caregiving a function of such factors as family size, geographic proximity, income and ethnicity? What can be projected about the size and characteristics of future cohorts of caregivers? What are the effects of informal caregiving on caregivers themselves, e.g. related to employment, income social activity and stress?

h. Characteristics of Persons with Long Term Care Needs

How many people with what health and functional characteristics require long-term care services. How does their status change over time? What are the rates of such change? How does the long term care experience of current population cohorts compare with past cohorts and what implications does this have for future cohorts?

How are the impaired elderly and MR/DD persons distinguished by subgroups, based on such factors as age, sex, ethnicity, marital status and living arrangements? What are the incidence and prevalence of different kinds of disabilities and functional impairments for such subgroups?

What are the most appropriate ways of measuring functional capacity, whether physical or mental? For example, what is the most valid and reliable way to measure performance under the Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL)? In what way, if any, does greater longevity affect the onset and duration of health and functional limitations? What are the implications of this for planning long-term care services?

What types of living arrangements characterize people with long term care needs? What changes in living arrangements occur for the elderly and MR/DD population over time and what socio-economic and health characteristics are associated with these changes?

2. Critical Elements

Several elements are critical to the program of research solicited.

a. Knowledge of Prior Research

Grantee must demonstrate knowledge of past and current research relating to long term care. This includes empirical studies, surveys, evaluations of demonstration projects and long term care modeling.

b. Policy-relevance

The applicant should indicate how the questions to be investigated will yield results relevant to national long term care policy and program development in the near term.

For example, there is concern with alleviating catastrophic expenses among the elderly for long term care, particularly through private financing options. A research project that addressed the extent and distribution of out-of-pocket costs for long term care would consequently be policy-relevant.

c. Familiarity with Departmental and Other Data Bases

The applicant should demonstrate familiarity with the data base(s) available for analysis and their applicability to the applicant's proposed research.

The principal public use data sets available for analysis at present are the 1977 and 1985 Nursing Home Survey, the 1982–84 Long Term Care Survey and data from the National Long-Term Care Channeling Demonstration. However, applicants are not limited to these data sources.

In addition to above-mentioned data sets, there are a number of other data sources that can be considered. These include, but are not limited to: (a) Decennial Census (b) Current Population Surveys (c) Survey of Income and Program Participation (SIPP) (d) National Medical Care Expenditure Survey (e) National Medical Care Utilization and Expenditure Survey and (f) National Health Interview Survey/ Supplement on Aging.

Data sets from States and from demonstration projects may also be used. However, their relevance to

national policy concerns must be demonstrated.

The applicant should also be familiar with data bases that will become available in the future insofar as they may permit further development of the applicant's project. Examples include the next-of-kin file from the 1985 National Nursing Home Survey and, over the longer term, the National Medical Expenditure Survey.

3. Potential Users

Potential users of the research include federal and state officials involved in long term care policy, program development, program adminsitration and financing. Additionally, research findings may be used by hospital and nursing home administators, social sevice providers, home health agencies, and the insurance industry.

4. Types of Projects Excluded

Applications that are limited to theoretical development will not be considered.

Projects Funded Under This Announcement Are Limited To Using Existing Data Sets Available in Computerized Data Files. No New Data Collection Will Be Permitted.

5. Content and Organization of the Application

The application must begin with a cover sheet followed by the required applcation forms and an abstract of the application that does not exceed two single-spaced pages. The application may not exceed 25 double-spaced pages. Each application should include the background and significance of the issue, the specific questions to be investigated, the data sources to be used, the methodologies proposed for conducting the investigation and the policy issues which the research will help illiminate.

During the proposal development stage, the technical assistance role of the Department of Health and Human Services will be limited exlusively to clarifying the intent of this announcement. Applicants are advised not to ask for feedback on (a) choice of topics (b) what to include in the application and (c) likelihood of funding.

B. Applicable Regulations

1. "Grant Programs Adminsitered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Parts 74).

C. Effective Date and Duration

1. The initial grant awards pursuant to this announcement are expected to be made by September 30, 1988. It is expected that six to eight grants will be made by that date. Additional grants may be made in Fiscal year 1989 if funds become available.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately.

3. Applicants may present a work plan and budget covering a twelve to fifteen monthly period. After the initial time period, grants may be refunded.

D. Statement of Funds Available

1. A total of $300,000 in FY 88 funds has been set aside for grants to be awarded as a result of this announcement. Organizations submitting applications may propose a project at the dollar level they consider appropriate.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

Applicants are encouraged to seek additional funds from other sources for their project. Applicants should discuss any commitments, plans or hopes for additional funds, including size and sources. If successful completion of a proposed project depends on outside funding, ASPE's funding commitment will be made contingent on evidence of that outside funding.

E. Application Processing

1. Applications will be screened initially for relevance to the needs identified in Section A, subsection (1) through (5). If judged relevant the application will then undergo review by a government rview panel, possibly augmented by outside experts.

2. Applications will be judged as to eligibility, quality and relevance, according to the criteria set forth in item 5.

3. A rating of "unacceptable" on any individual criterion may render the entire application unacceptable. Applicants should therefore make sure that all criteria are fully addressed.

4. Applications should be as concise as possible, consistent with the information requirements of reviewers. Applications should be limited to 25 double-spaced typed pages, exclusive of forms, resumes, and budget. They should avoid being unduly elaborate and should not contain voluminous supporting documentation.

5. The evaluation of applications will be carried out in terms of the following critieria. The weights of the criteria are shown in parentheses.

a. The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organzations and individuals concerned with the issues discussed in Section A with improved bases for making decisions about these issues. (20 Points)

b. The potential usefulness of the proposed project for the advancement of scientific knowledge. (15 Points)

c. The clarity of the statement of objectives, methods and anticipated results. (15 Points)

d. The appropriateness and soundness of the methodology, including research design, statistical techniques, modeling strategies, selection of data and other procedures. (30 Points)

e. The qualifications and experience of the project personnel. (20 Points)

F. Deadline for Applications

The deadline for applications is COB, Friday, July 29, 1988.

Mailed applications may be sent by U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application is sent by first class, registered or certified mail not later than July 25, 1988 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the Post Office.

Applications sent by commercial carrier will be considered received on time by the Grants Officer if sent not later than (July 25, 1988) as evidenced by a receipt from the commercial carrier.

An application to be hand-delivered must be taken to the Grants Officer at the address listed below. Hand-delivered applications will be accepted daily between 9:00 am and 4:30 pm, Washington, DC time, except Saturdays, Sundays and Federal holidays. Applications will not be accepted after close-of-business on (July 29, 1988).

G. Disposition of Applications

1. On the basis of the review of the application, the Assistant Secretary will either (a) approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or need for further review.

2. The Assistant Secretary will notify applicants of the disposition of their application. A signed notification of the grant award will be issued to the person listed in Block 4 of the application to notify the applicant of the approved award.

H. Application Instructions and Forms

Copies of applications should be requested from and submitted to the Grants Officer. Send applications by the deadline to:

Mr. Albert A. Cutino, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Room 426–F, 200 Independence Avenue SW., Washington, DC 20201, Phone: 202/245–1794

Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after June 30, 1988.

I. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

J. Intergovernmental Review of Federal Programs

This announcement is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," nor its implementing regulations at 45 CFR Part 100.

Date: May 17, 1988.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 88–11500 Filed 5–20–88; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Committee Meetings; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration; HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on May 11, 1988, Volume 53, No. 91, on page 16784 that the Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH, and the Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH, would meet at the Linden Hill Hotel. The notice is being corrected to read as follows:

The Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH, will meet at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH, will meet at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

All other information for these committees remains the same.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: May 17, 1988.

[FR Doc. 88–11427 Filed 5–20–88; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Cooperative Agreements for Pilot Demonstration Projects for the Prevention of Perinatal Infection With Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS); Program Announcement and Notice of Availability of Funds for Fiscal year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 for cooperative agreements for pilot demonstration projects to prevent perinatal infection with human immunodeficiency virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS). Such projects may be either population-based or cohort-based.

Authority

These projects are authorized under the Public Health Service Act: section 301(a) [42 U.S.C. 241(a)], as amended; section 311(b) [42 U.S.C. 243(b)], as amended; and section 318 [42 U.S.C. 247c], as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Purpose

The purpose of this program is to assist selected areas with substantial numbers of women who are infected with HIV to: (1) Develop an effective population-based program to prevent perinatal transmission of HIV infection, or (2) generate information needed to develop such programs through suitable cohort-based projects. There is an urgent need to develop effective programs to prevent pregnancies among (and further HIV transmission by) HIV-infected women and women at high risk of HIV infection. AIDS in women and children has occurred among minorities disproportionately and has frequently been associated with intravenous drug abuse. Successful programs will need to address such issues and will require knowledge about accessing, identifying, and obtaining the participation of a community's HIV-infected women and women at high risk of HIV infection and will equire effective strategies which encourage consistent use of contraception among these women.

Applications, whether population-based or cohort-based, should seek to use and augment, rather than duplicate, AIDS health education/risk reduction, counseling and testing, and HIV-seroprevalance surveillance activities which are eligible for funding through other sources.

Eligible Applicants

Eligible applicants for both population-based and cohort-based studies are the official public health agencies of States, the District of Columbia, the Commonwealth of Puerto Rico, and local governments. These applicants are encouraged to have health care providers or research groups participate in the program. Eligible applicants for cohort-based studies also include accredited Schools of Medicine, Osteopathy, and Public Health. All proposed programs must be located within or include a Standard Metropolitan Statistical Area with a minimum of 25 cases of AIDS among adult women meeting the CDC case definition and reported to CDC during the calendar year 1987.

Cooperative Activities

A. Recipient Activities

1. Population-based Projects

a. *Obtain community participation*—Community input should be obtained during planning, implementation, and evaluation of the program. In particular, participation by members of black, Hispanic, and immigrant communities affected by the program should be obtained.

b. *Define the target population*—Suitable populations may be an entire community or may be narrower, such as the catchment population for an obstetric service experiencing perinatal HIV infections. However, the target population should be defined geographically and permit a population-based evaluation of program effectiveness.

c. *Develop methods to identify, and obtain the participation of infected women in the defined community*—A plan should be developed and implemented to identify the sub-populations of women at risk for HIV in the community and to recruit and

provide service to the HIV-infected women from these epidemiologically important sub-populations.

d. *Coordinate with existing outreach activities*—Applicants should collaborate with existing outreach programs to identifiy and recruit the participation of female intravenous drug users, if such women constitute important sub-populations of the community's HIV-infected women or women at high risk for HIV infection.

e. *Develop strategies to assist women to reduce their risk of HIV transmission or acquisition, and for those who desire to avoid pregnancy*—Devise and implement creative and effective methods: (1) To educate and counsel HIV-infected women and women at high risk of becoming infected concerning pregnancy prevention, (2) to effect behavioral changes among these women relating to intravenous drug abuse or sexual practices that reduce their risk of HIV transmission or acquisition, and (3) to increase among those women the prevalence of effective contraceptive use, especially those contraceptives which are effective against transmission of HIV to sex partners.

f. *Evaluate attitudes and perceptions among women at high-risk for perinatal transmission*—Samples of HIV-infected women, HIV-negative women at high risk for HIV infection, and women who have delivered a child who was infected or developed AIDS should be evaluated by social scientists for attitudes and perceptions related to perinatal transmission. These samples should include women who are not likely to be enrolled in the program and whose evaluations may require field assessment. The evaluation should address, but not be limited to, their values, attitudes and beliefs concerning pediatric AIDS, contraception, pregnancy, and the meaning and importance of motherhood, considering sociodemographic parameters.

g. *Evaluate program effectiveness*—Evaluate the effectiveness of the program by determining the HIV seroprevalence at delivery among women from the target community, using data obtained from the surveillance of HIV antibody in newborn heelstick or cord blood specimens; identify, if possible, a "control" community so that the effects of the program can be distinguished from ecologic trends.

h. *Evaluate strategies and operational aspects of program*—Develop systems to monitor: Effectiveness of strategies to educate women about perinatal transmission of HIV infection; behavioral changes relating to intravenous drug abuse or sexual practices that reduce risk of HIV transmission among those enrolled; consistency of effective use of contraception among women enrolled in the program; pregnancies among those enrolled; rates of follow-up; effectiveness of the program in accessing women in the sub-populations at risk for HIV infection; and other measures of interest.

i. *Participate in the transfer of information and methods developed in this program to other States and communities.*

2. Cohort-based Project

a. *Obtain community participation*—Community input should be obtained during planning, implementation, and evaluation of the program. In particular, participation by members of black, Hispanic, and immigrant communities affected by the program should be obtained.

b. *Define the target population*—The cohort(s), whether hospital-based, clinic-based, or constructed in another manner, should consist of HIV-infected women or women at high-risk of acquiring the infection. There should be minimal use of these funds for identifying these HIV-infected or high-risk women. The applicant should describe the sub-populations of women in the community who are at risk for HIV infection and pregnancy, in terms of size and demographic parameters, and describe how the cohort(s) is related to those sub-populations.

c. *Develop strategies to assist women at risk who desire to avoid pregnancy and to reduce their risk of HIV transmission or acquisition*—Devise and implement creative and effective methods: (1) To educate and counsel HIV-infected women and women at high risk or becoming infected concerning pregnancy prevention, (2) to increase among those women the prevalence of effective contraceptive use, and (3) to effect behavioral changes among these women relating to intravenous drug abuse or sexual practices that reduce their risk of HIV transmission or acquisition.

d. *Evaluation of attitudes and perceptions among women at high-risk for perinatal transmission*—Samples of HIV-infected women, HIV-negative women at high risk for HIV infection, and women who have delivered a child who was infected with HIV or developed AIDS should be evaluated by social scientists for attitudes and perceptions related to perinatal transmission. These samples should include women who are not likely to be enrolled in the program and whose evaluations may require field assessment. The evaluation should address, but not be limited to, their perceptions concerning pediatric AIDS and attitudes toward contraception, pregnancy and the meaning and importance of motherhood, considering sociodemographic parameters.

e. *Evaluation of strategies and operational aspects of program*—Develop systems to monitor: Effectiveness of strategies to educate women about perinatal transmission of HIV infection; consistency of effective use of contraception among women enrolled in the program; pregnancies among those enrolled; behavioral changes relating to intravenous drug abuse or sexual practices that reduce risk of HIV transmission among those enrolled; rates of follow-up; and other measures of interest.

f. *Develop methods to transfer information and methods developed in this program to other States and communities.*

To the extent that the recipient engages in information collection through questionnaires, survey forms, or any related means, there shall be no review of such forms or the information collection design by CDC or another Federal agency. However, recipients may request technical consultation from CDC.

B. CDC Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating activities for preventing the perinatal transmission of HIV infection and AIDS.

2. Provide current scientific information regarding national program strategies for such prevention.

3. Provide assistance in data management and analysis.

4. Participate in the analysis of data gathered from program activities and the reporting of results.

5. Assist in the transfer of perinatal prevention information and methods developed in this program to other States and communities.

Availability of Funds

Approximately $5,300,000 is available in Fiscal Year 1988 of which $1,300,000 is available to fund up to two continuation cooperative agreements and $4,000,000 is available to fund up to eight new cooperative agreements. It is expected that the average award for new cooperative agreements will be $500,000, ranging from $200,000 to $1,500,000.

It is expected that new cooperative agreements will begin on or about September 1, 1988, and will be funded for 12 months in a 1–5 year project period; population-based projects may

be 3–5 years, cohort-based projects 2–3 years. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk reduction if approved in accordance with the guidance document: CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS (JANUARY 1988).

Funds may be used to support personnel and purchase supplies and services directly related to planning, organizing, and conducting the program described in this announcement. Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered.

Funds may not be used to pay for clinical treatment costs. Funds to support testing for identifying HIV-infected women should not duplicate existing CDC-funded counseling and testing activities and should be coordinated with State and locally funded efforts.

Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or services provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him/her or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed: (A) In summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care under such program is not disclosed.

Reporting Requirements

Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

Other Requirements

Recipients must comply with the document titled: CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS (JANUARY 1988) (53 FR 6034, FEBRUARY 29, 1988).

Review and Evaluation Criteria

A. Competing Applications

Competing applications will be reviewed and evaluated according to the following criteria:

1. Population-based Projects

a. *Magnitude of the problem* (5 points)
b. *Understanding the problem* (5 points)
c. *Participation by the community* (5 points)
d. *Defining the target population and accessing HIV-infected women* (15 points)
e. *Coordination with existing outreach activities and other relevant AIDS-related activities* (10 points)
f. *Strategies to increase effective use of contraception among women in the program* (10 points)
g. *Evaluation of attitudes, perceptions, and values* (10 points)
h. *Strategies to reduce the risk of HIV transmission or acquisition* (5 points)
i. *Ability to measure seroprevalence at delivery* (10 points)
j. *Evaluation of intervention strategies and efforts to access targeted women* (15 points)
k. *Personnel* (10 points)

2. Cohort-based Projects

a. *Magniture of the problem* (10 points)
b. *Understanding the problem* (5 points)
c. *Participation by the community* (10 points)
d. *Defining the target population* (10 points)
e. *Strategies to increase effective use of contraception among women in the program* (15 points)
f. *Evaluation of attitudes, perceptions, and values* (10 points)
g. *Strategies to reduce the risk of HIV transmission or acquisition* (5 points)
h. *Evaluation of intervention strategies* (15 points)
i. *Personnel* (10 points)
j. *Coordination with other relevant AIDS-related activities* (10 points)

Applications will also be reviewed according to the extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

In funding approved applications, consideration will be given to the distribution of projects among high morbidity areas and the variety of target populations, risk factors, and types of interventions addressed. In any one SMSA, only one population-based project will be selected for funding.

B. Noncompeting Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Degree to which the accomplishments of the prior budget period demonstrate that the applicant is meeting its objectives.

2. Extent to which any new or revised objectives are realistic, specific, numerically measurable, and time-phased and the extent to which the methods described will clearly lead to achievement of these objectives;

3. Extent to which the evaluation plan will allow management to monitor whether performance is of acceptable quality, the methods are effective, and the activities are having an impact.

4. Extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Application Submission

The original and two copies of the application must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, GA 30305, on or before July 15, 1988.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Jones, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842-6575 or FTS 236-6575.

Technical information may be obtained from Dr. Stuart M. Berman, Division of Sexually Transmitted Diseases, Centers for Disease Control, (404) 639-2570, or FTS 236-2570.

Dated: May 16, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-11468 Filed 5-20-88; 8:45 am]

BILLING CODE 4160-18-M

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting, which will be open to the public, limited only by the space available:

The NIOSH Board of Scientific Counselors Subcommittee for Scientific Review of Notification for Retrospective Cohort Mortality Studies

Date: June 7-8, 1988.

Place: Conference Room C, Alice Hamilton Laboratory, 5555 Ridge Avenue, Cincinnati, Ohio 45226.

Time 8:30 a.m. to 5:00 p.m., each day.

Contact Person: Craig Withers, Acting Director, NIOSH Washington Office, HHH Building—Room 714B, 200 Independence Avenue, SW., Washington, DC 20201, Telephones: Commercial—202/472-7134; FTS 202/472-7134

Purpose: NIOSH has developed a set of draft documents summarizing its evaluation of candidate epidemiologic studies (retrospective cohort mortality studies) for individual worker notification. These documents, called Worker Notification Profiles, reflect NIOSH's application of guidelines developed by this Board of Scientific Counselors Subcommittee.

The Director of NIOSH, consistent with the charter of the NIOSH Board of Scientific Counselors, seeks the advice of the Board and its review of this set of Profiles to evaluate NIOSH's application of the Board's guidelines.

Dated: May 18, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-11592 Filed 5-20-88; 8:45 am]

BILLING CODE 4160-19-M

National Institutes of Health

Acquired Immunodeficiency Syndrome Program Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee on July 12, 1988, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place from 8:30 a.m. to 4:30 p.m. on July 12, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The purpose of the meeting is to discuss the progress, obstacles and opportunities in the development and testing of human immunodeficiency virus vaccines.

Dr. Jay Moskowitz, Associate Director for Science Policy and Legislation, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496-3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: May 17, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-11441 Filed 5-20-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, June 17, 1988. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 8, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Demestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 16, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH..

[FR Doc. 88-11442 Filed 5-20-88; 8:45 am]

BILLING CODE 4140-01-M

Department of the Interior

Bureau of Land Management

[AZ-020-08-4212-13; A-23306]

Realty Action; Exchange of Public Lands, Maricopa and Pinal Counties, AZ

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 1. N., R. 3 W.,
Secs. 3 and 7.
T. 1. N., R. 4 W.,
Secs. 1, 11, 12, 13 and 14.
T. 1. N., R. 5 W.,
Sec. 27.
T. 2. N., R. 3 W.,
Secs. 4, 5, 8, 9, 14, 15, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 33, 34 and 35.
T. 2. N., R. 4 W.,
Sec. 1.
T. 2. N., R. 5 W.,
Sec. 36.
T. 3. N., R. 4 W.,
Secs. 1, 11, 12, 13, 14, 24, 25 and 36.
T. 1. S., R. 2 W.,
Secs. 8, 9, 30, 31, 32 and 36.
T. 1. S., R. 3 W.,
Secs. 24, 25, 31 and 32.
T. 1. S., R. 4 W.,
Secs. 35 and 36.
T. 2. S., R. 1 W.,
Secs. 2, 11, 12, 25, 26, 27, 34 and 35.
T. 2. S., R. 2 W.,
Secs. 5, 6, 18, 28 and 33.
T. 2. S., R. 3 W.,
Secs. 5, 6, 7, 8, 17, 18 and 19.
T. 2. S., R. 4 W.,
Secs. 1, 11, 12, 13 and 14.
T. 3. S., R. 1 W.,
Secs. 1, 3, 4, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36.
T. 4. S., R. 1 E.,
Secs. 1, 3, 6, 7, 9, 10, 11, 12, 13, 34 and 35.

T. 5. S., R. 1 E.,
Secs. 2, 3, 10, 11, 13, 15, 22, 23, 24, 25, 27, 34, 35 and 36.
T. 6. S., R. 1 E.,
Secs. 2, 3, 10, 11, 12, 13, 14, 24, 25, 26, 35 and 36.
T. 7. S., R. 1 E.,
Secs. 1, 2, 3, 5 and 6.
T. 5. S., R. 2 E.,
Secs. 5, 6, 7, 8, 9, 19, 29, 30, 31, 32.
T. 6. S., R. 2 E.,
Secs. 5, 6, 7, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33.
T. 7. S., R. 2 E.,
Secs. 4, 5 and 6.
T. 7. S., R. 3 E.,
Secs. 3, 4 and 5.

Comprising 72,221.78 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

Segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first. This Notice supercedes and replaces any existing NORA's on the previously described public lands, but does not replace IL Application A–17000–Z.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Date: May 17, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–11469 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–08–5440–ZBAD, CA 20933]

Realty Action; Noncompetitive Sale of Public Land in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sale of public land CA 20933.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at the appraised fair market value.

Mt. Diablo Meridian

T.29S., R.30E.,
Sec 34, M.S. 5009.

Containing 15.01 acres, more or less.
Appraised value: $11,560.00.

The land is being offered to the County of Kern by direct sale at the appraised fair market value. No other bids or bidders will be considered. The land is proposed for inclusion in the Bakersfield Metropolitan landfill to be developed by the County of Kern. The land is not required for any Federal purpose, and is difficult and uneconomic to manage as public land due to its isolation and lack of legal access. Disposal would best serve the public interest and is consistent with the Bureau's land use planning documents.

Patent terms and conditions will be as follows:

1. A reservation to the United States for a right-of-way for ditches or canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

A bid on the parcel, along with an additional $50 fee, will constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719 (b)).

Reservation of the mineral estate would interfere with the sanitary landfill development. The mineral interests applied for have nominal mineral value.

The designated bidder, County of Kern, will be required to submit payment of the fair market value plus the $50 mineral estate conveyance fee to the Bureau office at 4301 Rosedale Highway, Bakersfield, California. Payment will be by cash, money order, certified check, or cashiers check.

Publication of this notice in the **Federal Register** segregates the above public lands from the operation of the public land laws, including the mining laws and mineral leasing. The segregative effective will end upon issuance of patent or 270 days from the date of publication in the **Federal Register**, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 4301 Rosedale Hwy. Bakersfield, California 93308; (805) 861–4236.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Date: May 9, 1988.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 88–11183 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–010–08–4212–14; CA 20181; CA 20182]

Realty Action; Noncompetitive Sale of Public Land in Tulare County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sale of public land CA 20181, 20182.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at the appraised fair market value.

Mt. Diablo Meridian

T.17S., R. 29E.
Sec 9, Lot 5 (Parcel #1–.015 acres-CA 20181);
Sec 9, Lot 6 (Parcel #2–1.45 acres-CA 20182).

Parcel #1 is being offered to Ben and Louise Prusek by direct sale at the appraised fair market value. Parcel #2 is being offered to John and Nadine Thompson. No other bids or bidders will be considered. The land sale is needed to resolve longstanding title and survey problems in the area and to resolve an unauthorized use. The land is not required for any Federal purpose. Disposal would best serve the public interest and is consistent with the Bureau's land use planning documents.

Patent terms and conditions will be as follows:

1. A reservation to the United States for a right-of-way for ditches or canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

A bid on the parcel, along with an additional $50 fee, will constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719 (b)).

The mineral interests being offered have no known mineral value.

The designated bidder will be required to submit payment of the fair market value plus the $50 mineral estate

conveyance fee to the Bureau office at 4301 Rosedale Highway, Bakersfield, California. Payment will be by cash, money order, certified check, or cashiers check.

Publication of this notice in the Federal Register segregates the above public lands from the operation of the public land laws, including the mining laws and mineral leasing. The segregative effect will end upon issuance of patent or 270 days from the date of publication in the Federal Register, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 4301 Rosedale Hwy. Bakersfield, California 93308; (805) 861–4236.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Date: May 9, 1988.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 88–11184 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Reclamation

Irrigation Ratesetting Policy Approval and Availability of The Public Review Document, and The Public Review Comments and Responses Summary; Central Valley Project (CVP), CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Approval and implementation of CVP irrigation water ratesetting policy.

SUMMARY: On May 11, 1988, the Department of the Interior approved a new irrigation water ratesetting policy for the CVP. The new ratesetting policy was developed pursuant to the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented; section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196); the Act of July 2, 1956 (70 Stat. 483), the Reclamation Reform Act of 1982 (96 Stat. 1263); and sections 105 and 106 of Pub. L. 99–546, Act of October 27, 1986 (100 Stat. 3051, 3052).

The Department of the Interior has reviewed all of the testimony presented at the public hearing held on June 16, 1987, in Sacramento, California, and all of the written comments provided by August 15, 1987. The public hearing notice and comment periods were announced by notices in the Federal Register (Vol. 52, No. 91, page 17839, May 12, 1987; and Vol. 52, No. 143, page 28051, July 27, 1987). The Department has determined that there are no significant concerns which justify reconsideration or amendment of the proposed policy or reopening of the public comment period.

The new policy, the *Component with Individual Contractor Deficits Method*, detailed in the Irrigation Ratesetting Policy Public Review Document (1987), becomes effective in 30 days following the publication of this announcement.

Reclamation contact: Written requests for a copy of the Public Review Document (1987), and the Public Review Comment and Response Summary should be addressed to the Regional Director, Bureau of Reclamation, Water Rate Policy, MP–440, 2800 Cottage Way, Sacramento, California 95825. Telephone requests may be made to Donna Tegleman at (916) 978–5035 in Sacramento, California.

Date: May 11, 1988.

James W. Ziglar,

Assistant Secretary, Water and Science.

[FR Doc. 88–11307 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant

Name: U.S. Fish and Wildlife Service,
File no. PRT–708155
1011 E. Tudor Road,
Anchorage, Alaska 99503

Type of Permit: Scientific Research

Name of Animals: Alaskan sea otter (Enhydra lutris lutris); unlimited.

Summary of Activity to be Authorized: The applicant proposes to collect sea otters that are sick or seriously injured and send these otters to the U.S. Fish and Wildlife Service, Wildlife Health Laboratory in Madison, Wisconsin, for euthanization and complete post mortem examinations. Data will be used to determine causes of death in sea otters and for various genetic analyses.

Source of Marine Mammals for Research: Alaska

Period of Activity: May 1988 to December 1990.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) in Room 400, 1375 "K" Street, NW., Washington, DC.

Dated: May 13, 1988.

R.K. Robinson,

Chief, Branch of Permits Office of Management Authority.

[FR Doc. 88–11538 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–AN–M

Issuance of Permit for Marine Mammals

On March 17, 1988, a notice was published in the Federal Register Vol. 53, FR No. 52 that an application had been filed with the Fish and Wildlife Service by the Alaska Fish & Wildlife Research Center (PRT# 690715) for a permit to take walruses (Odobenus rosmarus) for scientific research.

Notice is hereby given that on April 29, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein. Furthermore, an amendment to that permit was issued on May 10, 1988, authorizing the immobilization of walruses using any disassociative, narcotic and/or barbiturate immobilizing drugs, rather than the previously authorized use of only telezol and/or demerol/seritol.

The permits are available for public inspection during normal business hours at the Office of Management Authority, Room 403, 1375 K Street, NW., Washington, DC 20005.

Date: May 13, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88–11539 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–AN–M

National Park Service

Availability of Plan of Operations and Environmental Assessment Seismic Surveys; Trafalgar House Oil and Gas, Inc., Padre Island National Seashore, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36, Part 9, Subpart B, of the Code of Federal Regulations of the availability of an Environmental Assessment and of an oil and gas Plan of Operations submitted by Trafalgar House Oil and Gas, Incorporated, for the purpose of conducting four geophysical seismic exploration surveys from the Novillo Prospect and Little Shell Beach areas to the Laguna Madre, Padre Island National Seashore.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 346, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Date: May 11, 1988.

Donald A. Dayton,

Regional Director, Southwest Region.

[FR Doc. 88–11420 Filed 5–20–88; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Clean Air Act; Continental Steel Corp. et al.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States v. Continental Steel Corporation, and N. Wayne Etter, in his capacity as Trustee in Bankruptcy of Continental Steel Corporation, Debtor,* Civil Action No. IP86–849C, was lodged with the United States District Court for the Southern District of Indiana. The complaint filed by the United States alleged that defendant Continental Steel Corporation was in violation of various provisions of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, with respect to a number of surface impoundments used for the storage and treatment of hazardous waste at the Continental Steel facility in Kokomo, Indiana. Since Continental Steel was at the time of the filing of the complaint, and still is, subject to an ongoing bankruptcy proceeding, its bankruptcy trustee was also named as a defendant.

The proposed Consent Order, in conjunction with as Settlement Agreement entered into among the bankruptcy trustee and various creditors of the Continental Steel bankruptcy estate, provides for the establishment of the Continental Steel—Kokomo Facility Trust Fund to be administered by the Indiana Department of Environmental Management, to be used for the environmental closure of Continental Steel's Kokomo facility. The bankruptcy trustee will pay an initial sum of $1,500,000 into the Trust Fund, and the Trust Fund will have an additional allowed claim in the bankruptcy proceeding, as further described in the Settlement Agreement, of $1,000,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Continental Steel Corporation,* and D.J. Reference No. 90–7–1–340.

The proposed Consent Order may be examined at the office of the United States Attorney, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6314, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.90 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–11487 Filed 5–20–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Order Pursuant to the Clean Air Act; Dietzger Corp

In accordance with Department Policy, 28 CFR 50.7 notice is hereby given that a proposed Consent Order in *United States v. Dietzgen Corporation,* Civil Action No. 84–C–1026 was lodged with the United States District Court for the Northern District of Illinois. The compliant filed by the United States alleged that the defendant violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply at its Des Plaines, Illinois paper coating facility with applicable provisions of the Illinois State Implementation Plan ("SIP") pertaining to the control of volatile organic compound emissions.

The proposed Consent Order provides for defendant to achieve and maintain compliance with Illinois Pollution Control Board Rule 205(n) by not operating two of its coating lines without first demonstrating compliance with the SIP and by continuing to operate control equipment on two other coating lines. In addition, the proposed Consent Order requires defendant to pay a civil penalty of $61,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Dietzgen Corp.*, and D.J. Reference No. 90–5–2–1–640.

The proposed Consent Order may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois, 60604 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of

the Department of Justice. In requesting a copy please enclose a check in the amount of $1.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11488 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; IT Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on *May 11*, 1988, a proposed Consent Decree in *United States v. IT Corporation*, was lodged with the United States District Court for the Northern District of California. That action was brought pursuant to the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), for violations of regulations regarding treatment, storage and disposal of hazardous waste in surface impoundments at IT Corporation's facility in Martinez, California, known as the Baker facility.

The Consent Decree requires IT Corporation to close the Baker facility in accordance with a closure plan submitted to and approved by the U.S. Environmental Protection Agency ("EPA"). In addition, IT may not accept hazardous waste at the Baker facility after this Consent Decree is entered by the court, except under very limited circumstances as described in the Consent Decree. It Corporation must also submit plans to EPA regarding compliance with certain regulations promulgated under RCRA, codified at 40 CFR Part 265, that apply to the Baker facility and comply with those plans and regulations. During the period before the facility is closed and during closure, IT Corporation must comply with all applicable RCRA regulations at the Baker facility. Under the Consent Decree, IT Corporation will also pay a civil penalty of $260,000 to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. IT Corporation*, D.J. Ref. 90-7-1-395.

The proposed Consent Decree may be examined at the office of the United States Attorney, 450 Golden Gate Avenue, San Francisco, California 94102 and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue NW., Washington, DC. 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $1.60 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11486 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-27]

Robert E. Willis, M.D.; Revocation of Registration

On February 10, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert E. Willis, M.D. (Respondent) of 6606 N. Saginaw Street, Flint, Michigan 48505 proposing to revoke his DEA Certificate of Registration AW4787935 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated March 9, 1988, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On April 14, 1988, Respondent, through counsel, withdrew his request for a hearing. Judge Bittner issued an Order Terminating Proceedings on April 27, 1988. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that DEA initiated an investigation of a pharmacy located in Flint, Michigan after DEA records revealed that the pharmacy was an extremely large purchaser of various controlled substances. As part of the investigation, DEA investigators along with investigators from the State of Michigan, Department of Licensing seized the controlled substance prescriptions from the pharmacy for analysis. The analysis of the prescriptions revealed that Respondent's prescriptions accounted for approximately 80% of the controlled substance prescriptions on file at the pharmacy.

During the course of the investigation, 24 individuals, whose prescriptions were written by Respondent and filled at the pharmacy, were selected for profiling. These patient prescription profiles revealed that Respondent prescribed various controlled substances for these individuals on a regular basis over an extended period of time. On the majority of occasions, Respondent issued more than one prescription for controlled substances at a time. The profiles also revealed that these individuals all received prescriptions from Respondent on each occasion for essentially, the same controlled substances, including Percodan, Valium and some type of a codeine-base, or hydrocodone-base, cough preparation. The Administrator finds that at the time Respondent issued certain of these prescriptions, he was not registered with DEA in the schedule of the drug prescribed and therefore was not authorized to issue such prescriptions.

During the course of the investigation, it was discovered that it was common knowledge on the street that Respondent would issue prescriptions for controlled substances for no legitimate medical purpose. Respondent would write prescriptions for whatever drugs were asked for and would often issue more than one prescription at a time.

Two of Respondent's former employees were interviewed by a Special Agent of the Federal Bureau of Investigation. Both stated that Respondent would pre-sign prescriptions, a violation of 21 CFR 1306.05(a), and then ask them both to fill in the other information whenever "patients" would come in. Although these two employees refused to do so, other employees did fill in Respondent's pre-signed prescriptions. Both of the former employees stated that on several occasions they, along with other employees, approached Respondent with their concerns regarding his practice of writing numerous prescriptions, all for essentially the

same substances, for his "patients." Even after these conversations, Responsent continued to excessively prescribe controlled substances. In addition, the Special Agent interviewed an individual who stated that she went to Respondent's office on approximately six occasions in early 1986 and that on each occasion she received three prescriptions for controlled substances; one for 30 Percocet tablets, one for 30 Valium tablets, and one for eight ounces of a cough syrup. She stated that she never was seen by Respondent, but rather was seen by a nurse in his office. On each occasion, she was given a cursory physical examination and was asked certain questions, including what type of prescription she wanted. The nurse would then write the requested prescriptions which had been pre-signed by Respondent.

The Administrator concludes that Respondent's continued registration with DEA would be inconsistent with the public interest. Respondent has miserably abused his controlled substance handling privileges and has exhibited a total disregard for the dangerous nature of controlled substances. No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Administrator concludes that Respondent's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW4787935, previously issued to Robert E. Willis, M.D., be, and it hereby is, revoked, and any pending application for the renewal of such registration, be, and they hereby are, denied. This order is effective June 22, 1988.

John C. Lawn,

Administrator.

Date: May 13, 1988.

[FR Doc. 88-11428 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-9]

Woodbridge Pharmacy, Inc., Washington, DC; Hearing

Notice is hereby given that on December 8, 1987, the Drug Enforcement Administration, Department of Justice, issued to Woodbridge Pharmacy, Inc. an Order to Show Cause as to why the Drug Enforcement Administration should not deny its application for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, May 25, 1988, in Courtroom 10, Room 309, United States Claims Court, 717 Madison Place NW., Washington, DC.

Dated: May 16, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11429 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-51]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Supersonic Cruise Airplane Drag Reduction Technology.

DATE AND TIME: June 16, 1988, 8:30 a.m. to 5 p.m.; and June 17, 1988, 8 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Kutler, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Supersonic Cruise Airplane Drag Reduction Technology, chaired by Professor Dean Chapman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open

Agenda

June 16, 1988

8:30 a.m.—Opening Remarks.
9 a.m.—A View of European Technology.
11 a.m.—OAST Supersonic Aero Plans.
11:30 a.m.—Current NASA Flight Program.
1 p.m.—State-of-the-Art for Boundary Layer Transition Prediction.
2:30 p.m.—Propulsion/Airframe Integration Drag.
3:15 p.m.—High Speed Civil Transport.
4 p.m.—Subsonic/Transonic Drag Reduction Work.
5 p.m.—Adjourn.

June 17, 1988

8 a.m.—Oblique Flying Wing.
8:30 a.m.—Industry Topics.
10 a.m.—Team Discussion and Planning.
1 p.m.—Facility Tour.
3 p.m.—Adjourn.

May 18, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11475 Filed 5-20-88; 8:45 am]

BILLING CODE 7510-01-M

[88-52]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronatuics Advisory Committee, Ad Hoc Review Team for Rotorcraft Powertrain and Propulsion.

DATE AND TIME: June 7, 1988, 10 a.m. to 5 p.m.; and June 8, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 225, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Reck, Office of Aeronautics and Space Technology, National

Aeronautics and Space Administration, Washington, DC 20546, 202/453–2847.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team for Rotorcraft Powertrain and Propulation, chaired by Dr. F. Blake Wallace, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open

Agenda

June 7, 1988

10 a.m.—Ongoing NASA Program Reviews.
1:30 p.m.—Related Department of Defense Program Reviews.
5 p.m.—Adjourn.

June 8, 1988

8:30 a.m.—Continue Ongoing NASA Program Reviews.
10:30 a.m.—Tour Facilities.
1:30 p.m.—Working Session for Review Team Members.
3:30 p.m.—Adjourn.

May 18, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–11476 Filed 5–20–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ECONOMIC COMMISSION

Open Meeting

AGENCY: National Economic Commission.

ACTION: Notice of commission meeting.

Summary: The National Economic Commission will hold a public meeting on May 31, 1988. The meeting will be held in Room 210, Cannon House Office Building, Washington, DC from 3:00–5:30 p.m.

Agenda: The meeting will be devoted to a presentation on issues related to budget process reform. The Commissioners will be briefed by Commission staff and invited experts.

FOR ADDITIONAL INFORMATION: Jim Hildreth, National Economic Commission, 734 Jackson Place, NW, Washington, DC 20503; 202/789–1993.

SUPPLEMENTARY INFORMATION: See **Federal Register**, Vol. 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88–11492 Filed 5–20–88; 8:45 am]

BILLING CODE 6820–45–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions aof the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before June 22, 1988.

ADDRESSES: Send to comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202–786–0233) and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions.

Title: Applications and Instruction Forms for the Projects Category.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 223.

Estimated Hours for Respondents to Provide Information: 52 per respondent.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88–11467 Filed 5–20–88; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Commonwealth Edison Company (CECo, the licensee) for the Dresden Nuclear Power Station, Unit 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would delete part of a certain license condition and revise the Technical Specifications (TS) to support refueling and startup for Cycle 11 operation.

The proposed change in the Dresden Unit 3 License (DPR–25) is deletion of the condition requiring a Safety Evaluation for coastdown operation with off-normal feedwater temperature from section 3.E of the license.

The Technical Specification changes specific to the Cycle 11 reload fuel and analyses include: Revision of the Minimum Critical Power Ratio (MCPR) operating limit for Cycle 11, reduction of the Single Loop Operation (SLO) MCPR adder to 0.01 (from 0.03), a reduction in the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) reduction factor for SLO to 0.91 (from 0.70), deletion of the paragraph that requires a MCPR penalty based on scram time performance, incorporation of transient Linear Heat Generation Rate (TLHGR) limits, and revision of reduced flow MCPR limits.

The Technical Specification change resulting from analyses performed to allow equipment out-of-service includes revision of the relief valve Technical Specifications to require action only after two relief valves are found to be

inoperable, provided MAPLHGR reduction factors are implemented.

The Technical Specification changes provided for clarification or as administrative changes include; removal of all references to GE fuel (except in spent fuel storage Technical Specifications), changing references to EXXON Nuclear Company (ENC) to Advanced Nuclear Fuels Corporation (ANF) (except in titles of earlier documents and definitions of nuclear limits), and defining Transient LHGR (TLHGR), Steady State LHGR (SLHGR), Fuel Design Limiting Ratio for Centerline melt (FDLRC) and Fuel Design Limiting Ratio for Exxon Fuel (FDLRX).

These revisions to the license of Dresden Unit 3 would be made in response to the licensee's application for amendment dated March 9, 1988.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, CECo has proposed an amendment of Facility Operating License DPR–25 which would revise certain license conditions and TS in order to provide for Cycle 11 operation of Dresden Unit 3. This license amendment will establish the necessary critical operating limits, defined operating domains, and surveillance requirements to assure safe operation of Dresden Unit 3 with the new Cycle 11 reactor core fuel configuration.

Environmental Impacts of the Proposed Action

By letter dated March 9, 1988, the licensee provided transient and accident safety analyses using approved methods to bound all normal and abnormal conditions of Cycle 11 operation for Dresden Unit 3.

The licensee's reload submittal analysis was performed by Advanced Nuclear Fuels (ANF) using licensing methodology to technically justify Cycle 11 operation. This methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of this reload submittal were transient and accident analyses coastdown with FW heater(s) of out-of-service, (FHOOS) relief valve out-of-service (RVOOS), Single Loop Operation (SLO) and Extended Load Line Limit Analysis (ELLLA). All core wide transients and Emergency Core Cooling System (ECCS) analyses were performed with the most restrictive RVOOS.

The Commission has reviewed these analyses, and in the Safety Evaluation Report proposed for this amendment, concludes that operation of the facility would not endanger public health and safety. The Commission finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and having no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of Dresden Nuclear Power Station Units 2 and 3 dated November 1973, regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of reload activities and subsequent plant operations allowed by this action will be adversely different when compared to previous operating and reload cycles. CECo is committed to operate Dresden Unit 3 in accordance with standards and regulations to maintain occupational exposures levels "as low as reasonably achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated November 1973, related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of Mary 9, 1988 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated March 9, 1988 and the Final Environmental Statement for Dresen Unit 3 dated November 1973 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 5th of May 1988.

For the Nuclear Regulatory Commission.

Leif Noorholm,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11463 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

Public Service Co. of New Hampshire; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the required on-site primary property damage insurance requirement of 10 CFR 50.54(w)(1) to the Public Service Company of New Hampshire, the licensee, for the Seabrook Station, located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w)(1) to reduce the full amount of required on-site primary property damage insurance. By letter dated October 1, 1987 and supplemented by additional information dated February 29, 1988, the licensee requested an exemption to reduce the amount of primary property damage insurance from 1.06 billion dollars to 620 million dollars until such time as Seabrook Station receives an operating license which allows the reactor to go critical or operate at any power level. The reduction in the amount of required on-site primary property damage insurance is the proposed action being considered by the staff.

The Need for the Proposed Action

The licensee's October 1, 1987 letter and supplemental information dated February 29, 1988 provided technical justification that 620 million dollars of primary property damage insurance provides an adequate level of coverage to return the Seabrook Station to a

condition ready for decommissioning following an accident considering the current operational limit. Granting the exemption request relieves the licensee from the unnecessary financial burden of carrying insurance coverage of 1.06 billion as required by 10 CFF 50.54(w)(1) until Seabrook Station receives an operating license which allows the reactor to go critical or operate at any power level.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the amount of on-site primary property damage insurance coverage and does not affect the manner of normal facility operation or the risk of facility accidents. While the change in insurance coverage may affect the financial arrangements of the licensee and have some economic consequences, the possibility that the environmental impact of licensed activities would be altered by changes in insurance coverage is extremely remote. The staff has determined in the exemption dated May 11, 1988 that a reduction in the amount of required on-site damage insurance, from 1.06 billion dollars to 620 million dollars is commensurate with the clean-up cost associated with a postulated accident while the reactor is maintained in a shutdown, subcritical configuration. Thus, the reduced coverage authorized by the proposed exemption is sufficient to fund clean-up of radiological impacts associated with any accidents postulated with the reactor maintained in a subcritical condition. In addition, the exemption in question would not authorize construction or operation, would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee to carry 1.06 billion dollars of on-site primary property damage insurance. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not considered in the Final Environmental Statement for the Seabrook Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated October 1, 1987 and February 29, 1988. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 7th day of May, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11464 Filed 5-20-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 2-4, 1988, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on April 18, 1988.

Thursday, June 2, 1988

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.-9:45 a.m.: ECCS Evaluation Models (Open/Closed)—Review analytical models proposed for Westinghouse PWR upper plenum injection systems for two-loop nuclear power plants.

10:00 a.m.-12:00 noon: Consideration of Severe Accidents (Open)—Review and comment regarding proposed NRC plan to implement NRC policy statement regarding severe accidents.

1:00 p.m.-1:45 p.m.: Emergency Planning (Open)—Briefing regarding proposed final NRC rule on emergency preparedness in the vicinity of fuel cycle facilities and other radioactive material licenses.

1:45 p.m.-2:30 p.m.: Metallurgical Considerations (Open)—Briefing and discussion regarding the quality of fasteners used in nuclear plants and periodic inspection of BWR reactor pressure vessels.

2:45 p.m.-4:15 p.m.: Advanced Reactors (Open)—Discuss proposed ACRS report/recommendations regarding regulatory requirements for key design features of advanced gas-cooled and liquid-metal cooled nuclear power plants.

4:15 p.m.-6:00 p.m.: Babcock and Wilcox Nuclear Power Plants (Open)—Discuss proposed ACRS report on the safety reassessment of B&W nuclear power plants by the B&W Owners Group.

Friday, June 3, 1988

8:30 a.m.-10:15 a.m.: Prioritization of Generic Issues (Open)—Discussion and comment regarding the proposed prioritization of several new generic issues.

10:30 a.m.-11:30 a.m.: Reactor Operations (Open)—Briefing regarding proposed International Organization of Reactor Operators.

11:30 a.m.-12:00 noon: Future Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.-2:30 p.m.: Systems Interactions (Open)—Briefing regarding the proposed resolution of USI A-17, "Systems Interactions in Nuclear Power Plants."

2:30 p.m.-3:00 p.m.: ACRS Subcommittee Activities (Open)—Briefing and discussion regarding the status of the PDA review for the Advanced Boiling Water Reactor.

3:15 p.m.-4:15 p.m.: Radioactive Effluents (Open)—Briefing and discussion regarding proposed changes in 10 CFR Part 20, "Standards for Protection Against Radiation."

4:15 p.m.-5:15 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports on thermal-

hydraulic phenomena research activities.

5:15 p.m.–5:45 p.m.: New Members (Closed)—Discuss status of appointment of proposed members and the qualifications of candidates being considered for nomination.

5:45 p.m.–6:00 p.m.: ACRS Practices and Procedures (Open)—Discuss proposed procedures regarding members' participation in meetings which are not sponsored by the ACRS.

Saturday, June 4, 1988

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting and the 337th ACRS meeting (May 5–7, 1988).

1:30 p.m.–2:30 p.m. ACRS Subcommittee Activities (Open)—Reports and discussion of the status of assigned subcommittee activities including NRC regional activities, international meeting on operational safety experience, and bilateral meeting on significant operational events and consideration of severe accidents.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recording will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and Proprietary Information applicable to the facility being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: May 17, 1988.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 88–11497 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to the Virginia Electric and Power Company (the licensee), for the operation of the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2) located in Louisa County, Virginia.

The proposed amendments would modify the NA–1&2 TS, section 3.7.12, Table 3.7.5 to delete components which were replaced during the Service Water Reservoir Improvement Project and to change the allowable differential settlement between Unit 2 Main Steam Valve House and the Service Building (SB).

The proposed changes to the NA–1&2 TS, section 3.7.12, Table 3.7.5 would delete the settlement monitoring requirements for service water lines which were removed from service and replaced with new lines connecting the Service Water System to the new Service Water Valve House and spray headers during the Service Water Reservoir Improvement Project in 1987. This replacement was approved by the NRC in license Amendments 91 and 76, respectively, on March 27, 1987.

The proposed changes would also revise the limit for differential settlement between points 117 and 113 of Table 3.7.5. The differential settlement between settlement monitoring points 117, the SB, and 113, the NA–2 Main Steam Valve House (MSVH), has frequently approached 75% of the allowable value in Table 3.7.5 of TS section 3.7.12, and the measured value exceeded 75% of the allowable value in June 1987 and in 1980. A report exceeding 75% of allowable differential settlement between these two points was submitted to the NRC in 1981 and in August 1987 in accordance with the NA–1&2 TS. The August 1987 report is provided as part of the licensee's March 10, 1988 submittal.

The primary concern of the differential settlement between the SB and the NA–2 MSVH is the effect on the four buried service water lines running between the two structures. The code allowable stress in the service water lines for differential settlement condition is 45,000 pounds per square inch (psi). As stated in the NA–1&2 TS, critical differential settlement is the downward movement of the SB with respect to the MSVH. The results of an engineering analysis show that, disregarding survey inaccuracies, there has been negligible additional settlement of the SB since 1981.

The differential settlement limit of 0.03 feet in the TS was based upon an estimate of future differential settlement between points 117 and 113. The service water pipe stress analysis shows that considerable margin exists before code-allowable stresses would be exceeded and, therefore, the differential settlement of the SB with respect to the NA–2 MSVH has had no significant impact on the service water pipes or on plant operability.

The proposed changes would revise the allowable value of differential settlement between the SB and the NA–2 MSVH from 0.03 feet to 0.047 feet. This value, 0.047 feet, corresponds to a stress of 44,176 psi in the service water lines, which is still below the code-allowable stress of 45,000 psi. The reportable threshold of 75% would still be maintained in the NA–1&2 TS.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 20, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 10, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 12th day of May, 1988

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11466 Filed 5-20-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp., Kewaunee Nuclear Plant; Exemption

I.

The Wisconsin Public Service Corporation (WPSC, the licensee) is the holder of Facility Operating License No. DPR-43 which authorizes operation of the Kewaunee Nuclear Power Plant (the facility), at a steady-state power level not to exceed 1650 megawatts thermal. The facility is a pressurized water reactor located in Kewaunee County, Wisconsin. The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II.

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant.

One of the subsections, III.G, is the subject of the licensee's exemption request. Specifically, Subsections III.G requires specific fire protection features for structures, systems and components important to safe shutdown of the plant.

III.

By letter dated June 23, 1987, the licensee submitted requests for two exemptions from the technical requirements of subsection III.G of Appendix R to 10 CFR Part 50. Subsection III.G of Appendix R is related to fire protection features for ensuring the availability of necessary systems and associated circuits used to achieve and maintain safe plant shutdown.

The first exemption request pertains to paragraph III.G.2(b) of Appendix R. In areas where cables or associated circuits of redundant trains are located in the same fire area outside primary containment, paragraph III.G.2 of Appendix R requires separation by a 3-hour fire barrier or separation by more than 20 feet with no intervening combustibles and with fire detection and automatic fire suppression. The exemption was requested from the specific requirements of this section to the extent that it requires automatic fire suppression systems to be installed

throughout the Shield Building, Fire Area SB–65. The Shield Building consists of a 5-foot annular space between the building's inside wall and the reactor containment vessel. Cables required for alternative and dedicated shutdown are located within the annular space in two separate cable penetration areas. The cable penetration areas are separated by a distance greater than 20 feet free from intervening combustibles.

The fixed combustible loading in Fire Area SB–65 is low, consisting primarily of cable insulation. The overall combustible load is less than 1,500 Btu per square foot. Transient combustibles within the Shield Building are minimized by strictly controlled access and plant administrative procedures. Ionization smoke detectors are installed within the annular space of the Shield Building. These detectors are located near each cable penetration area. Visual and audible alarms for these detectors are provided in the Control Room. For manual fire fighting within Fire Area SB–65, portable fire extinguishers and hose stations are available in adjacent areas.

The purpose of requiring a fixed fire suppression system is to prevent a fire of significant magnitude from developing and damaging the ability to achieve and maintain safe shutdown. Due to the low combustible loading and the clear spatial separation between penetration areas, a significant fire exposure to alternative and dedicated shutdown cables does not exist. It is expected that, if a fire were to occur, it would develop slowly with an initially low heat release. Ionization detectors located at each of the cable penetration areas would activate annunciators in the Control Room, warning operators of a fire in the particular penetration area of the Shield Building. The fire brigade would then be dispatched to extinguish the fire manually, using the hose lines or portable extinguishers provided in adjacent areas.

Based on the low combustible loading of the area, the passive protection provided by the separation between penetration areas, the installed smoke detectors and the fire brigade's ability to extinguish a fire in the area, there is reasonable assurance that a fire in the Shield Building would not prevent a safe plant shutdown. The staff concludes the installation of fixed fire suppression in the Shield Building will not significantly increase the level of fire protection currently provided. Therefore, the fire protection features currently provided for Fire Area SB–65 are acceptable.

The second exemption request pertains to paragraph III.G.3 of Appendix R, which requires that fire detection and fixed fire suppression systems be provided to areas, rooms, or zones that contain alternative or dedicated shutdown capability.

An exemption was requested from the requirements of section III.G.3 of Appendix R to the extent that it requires fixed fire suppression throughout the Control Room portion of Fire Area AX–35. Automatic fire suppression systems are not currently installed in the Kewaunee Control Room. The Control Room is located on the 626-foot elevation of the Auxiliary Building in Fire Area AX–53. It contains the normal and engineered safety features control boards for the plant and is continuously manned by trained operators. Combustible materials within Control Room primarily consist of cable insulation and ordinary combustibles. The combustible loading is less than 10,000 BTU per square foot. Fire Area AX–35 is separated from other fire areas within the plant by fire barriers of 3-hour rated construction. The barriers are generally reinforced concrete or concrete block. Openings through the barriers are protected with 3-hour rated opening protectives such as penetration seals and dampers. Ionization smoke detectors are installed in selected panels and consoles in the Control Room. Additionally, a smoke detector is installed within the HVAC return ducting for the room. Portable extinguishers are available in the Control Room with additional extinguishers and hose stations available in adjacent areas. Alternate shutdown capability meeting the criteria of section III.G.3 has been provided for the Control Room via a dedicated shutdown panel located in Fire Zone TU–95A.

The fire protection in Fire Area AX–35 does not comply with technical requirements of section III.G.3 of Appendix R because automatic fire suppression is not installed in a zone for which alternative shutdown capability is provided. The purpose of requiring a fixed fire suppression system is to prevent a fire of significant magnitude from developing and damaging the ability to achieve and maintain safe shutdown. Because of the presence of ionization detectors and the continuous manning by trained operators, a fire in the Control Room should be detected early and extinguished by the fire brigade. Additionally, alternative shutdown capability independent of Fire Area AX–35 would be possible by means of a dedicated shutdown panel in Fire Zone TU–95A.

Based on the low combustible loading, the fire detection provided, the continuous manning by trained Control Room operators and the alternative shutdown capability provided, there is reasonable assurance that a fire in the Control Room will not prevent a safe plant shutdown. The staff concludes the installation of fixed fire suppression in the Control Room will not significantly increase the level of fire protection currently provided. Therefore, the fire protection features currently provided for fire area AX–35 are acceptable.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) The exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and (2) special circumstances are present for the exemption in that application of the regulations in this particular circumstance is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission grants the exemptions from the requirements of section III.G. of Appendix R to 10 CFR Part 50 to the extent discussed in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 11155.)

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of May 1988.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation

[FR Doc. 88–11465 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold an Executive Session on June 7, and June 16 and 17, 1988, 9:00 a.m. to 5:00 p.m. at the Interstate Commerce Commission Building, 1200 Constitution Avenue NW., Hearing Room B, Washington, DC.

Both of the meetings will be devoted to the formulation of the final report which is due to the President June 24,

1988. There will be a five day comment period from the first Executive Session on June 7th through June 12th to allow the public an opportunity to submit written comments and recommendations for consideration.

Records shall be kept of all Commission proceedings and shall be available for public inspection during regular office hours at 655 15th Street NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88-11498 Filed 5-20-88; 8:45 a.m.]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing Boston Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bravil Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3381)
EMC Corp.
Common Stock, $.01 Par Value (File No. 7-3382)
Dean Witter Government Income Trust
Sharies of Beneficial Interest (File No. 7-3383)
Chase Medical Group, Inc.
Common Stock, $.01 Par Value (File No. 7-3384)
New America High Income Fund, Inc. (The)
Common Stock, $.01 Par Value (File No. 7-3385)
Templeton Global Income Fund
Common Stock, $.01 Par Value (File No. 7-3386)
MFS Intermediate Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3387)
Owens & Minor, Inc.
Common Stock, $2.00 Par Value (File No. 7-3388)
Southdown, Inc.
Common Stock, $2.50 Par Value (File No. 7-3389)
Systems Integrators, Inc.
Common Stock, No Par Value (File No. 7-3390)
Eagle-Picher Industries, Inc.
Common Stock, $1.25 Par Value (File No. 7-3391)
Fieldcrest Cannon, Inc.
Common Stock, $.01 Par Value (File No. 7-3392)
First Republicbank Corp.
Convertible Perferred Series A, No Par Value (File No. 7-3393)
Growth Stock Outlook Trust, Inc.
Common stock, $.10 Par Value (File No. 7-3394)
Helig-Meyers Co.
Common Stock, $2.00 Par Value (File No. 7-3395)
MacNeil-Schwendler Corp.
Common Stock, $.10 Par Value (File No. 7-3396)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if its finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11470 Filed 5-20-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

San Juan Basin Royalty Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3397)
Soo Lines Corp.
Common Stock, $.03 ⅓ Par Value (File No. 7-3398)
Sun Distributors L.P.
Class A Depository Receipts, No Par Value (File No. 7-3399)
Maritran's Partners, L.P.
Depository Receipts, No Par Value (File No. 7-3400)
Universal Matchbox Group, Ltd.
Common Stock, $.01 Par Value (File No. 7-3401)
Rhoden, Inc.
Common Stock, $1.00 Par Value (File No. 7-3402)
Sikes Corp.
Class A Common Stock, $.10 Par Value (File No. 7-3403)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11471 Filed 5-20-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allegheny Ludlum Corp.
Common Stock, $.10 Par Value (File No. 7-3427)
AMRE, Inc.
Common Stock, $.01 Par Value (File No. 7-3428)

Applied Magnetics Corp.
Common Stock, $.01 Par Value (File No. 7–3429)
Birmingham Steel Corp.
Common Stock, $.01 Par Value (File No. 7–3430)
Blue Chip Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3431)
Cedar Fair, L.P.
Common Stock, No Par Value (File No. 7–3432)
Columbia Pictures Enterprises
Common Stock, $.01 Par Value (File No. 7–3433)
Dean Witter Government Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3434)
Jepson Corp.
Common Stock, $.01 Par Value (File No. 7–3435)
New Jersey Resources, Inc.
Common Stock, $5.00 Par Value (File No. 7–3436)
Nicholas Applegate Growth Fund
Common Stock, $.01 Par Value (File No. 7–3437)
Orion Capital Corp.
Common Stock, $1.00 Par Value (File No. 7–3438)
Owens & Minor, Inc.
Common Stock, $2.00 Par Value (File No. 7–3439)
Permian Partner L.P.
Cumulative Convertible Preferred, No Par Value (File No. 7–3440)
Prudential Strategic Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3441)
Putnam Premier Income Trust
Common Stock, No Par Value (File No. 7–3442)
Quest for Value Dual
Purpose GF Fund, Inc. Capital Shares (File No. 7–3443)
Russ Berrie & Co., Inc.
Common Stock, $.10 Par Value (File No. 7–3444)
Sea Containers, Ltd.
Common Stock, $.01 Par Value (File No. 7–3445)
Southdown, Inc.
Common Stock, $2.50 Par Value (File No. 7–3446)
Symbol Technologies
Common Stock, $.01 Par Value (File No. 7–3447)
The Thai Fund
Common Stock, $.01 Par Value (File No. 7–3448)
UnionFed Financial Corp.
Common Stock, No Par Value (File No. 7–3449)
Worldwide Value Fund
Common Stock, $.001 Par Value (File No. 7–3450)
Amwest Insurance Group
Common Stock, No Par Value (File No. 7–3451)
Carnival Cruise Lines
Common Stock, $.01 Par Value (File No. 7–3452)
Media General, Inc.
Common Stock, $1.00 Par Value (File No. 7–3453)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11472 Filed 5–20–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Southwest Mortgage Investments Corp.
Common Stock, $.01 Par Value (File No. 7–3404)
Analog Devices, Inc.
Common Stock, $.16 Par Value (File No. 7–3405)
Brazil Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–3406)
Brown Foreman
Common Stock, Class B (File No. 7–3407)
Callaghan Mining Corporation
Common Stock, $1.00 Par Value (File No. 7–3408)
Carnival Cruise Lines, Inc.
Common Stock, $.01 Par Value (File No. 7–3409)
Compania Telefonica National
American Depositary Receipts (File No. 7–3410)
Dow Jones & Co.
Common Stock, $1.00 Par Value (File No. 7–3411)
Entertainment Marketing Inc.
Common Stock, $.01 Par Value (File No. 7–3412)
First Wyoming Bancorp
Common Stock, No Par Value (File No. 7–3413)
Heico Corporation
Common Stock, $.16 Par Value (File No. 7–3414)
Hoynanian Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–3415)
ICH Corporation
Common Stock, $1.00 Par Value (File No. 7–3416)
Mexico Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–3417)
NV Ryan, L.P.
Limited Partnership (File No. 7–3418)
Patrick Petroleum Corporation
Common Stock, $.20 Par Value (File No. 7–3419)
Pauley Petroleum Corporation
Common Stock, $1.00 Par Value (File No. 7–3420)
RB Industries, Inc.
Common Stock, No Par Value (File No. 7–3421)
Shell Transport & Trading PLC, Ltd.
Ordinary Shares (File No. 7–3422)
Southmark Corporation
Adjustable Cumulative Preferred D, Series H 9¼% Cumulative Convertible Preferred (File No. 7–3423)
Thai Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3424)
Standard Brands Paint Company
Common Stock, $.01 Par Value (File No. 7–3425)
USG Corporation
Common Stock, $4.00 Par Value (File No. 7–3426)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC

20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11473 Filed 5-20-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Interlake Corporation
Common Stock, $1.00 Par Value (File No. 7-3377)
Earle M. Jorgensen Company
Common Stock, $1.00 Par Value (File No. 7-3378)
House of Fabrics, Inc.
Common Stock, $0.10 Par Value (File No. 7-3379)
IP Timberlands, Ltd.
Class A Depositary Units, No Par Value (File No. 7-3380)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11474 Filed 5-20-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting; Connecticut

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting, at 9:00 a.m., on Monday, July 11, 1988, at the Yale Inn, 900 East Maine Street, Meriden, Connecticut 06450, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(202) 240-4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 17, 1988.

[FR Doc. 11540 Filed 5-20-88; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Change in Date of Scheduled Public Meeting; Maryland

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, Maryland, has changed the date for its public meeting from June 1, 1988, to May 25, 1988, at 5:30 p.m. to 7:30 p.m., at the Blue Cross and Blue Shield of Maryland to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Flood, Baltimore, Maryland 21202, (301) 962-2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 18, 1988.

[FR Doc. 88-11541 Filed 5-20-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting; Mississippi

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Jackson, Mississippi, will hold a public meeting, at 9:00 a.m., on Friday, May 27, 1988, at the Jackson District Office, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 100 West Capitol Street, Suite 322, Jackson, Mississippi 39269-0396, (601) 965-4363.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88-11542 Filed 5-20-88; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Thursday, June 23rd, from 1:30 p.m., to 4:00 p.m. and on Friday, June 24th, 1988 from 8:30 a.m. to 10:00 a.m. on the campus of the University of Nevada—Reno at the Business College Building, 4th floor, in the offices of the Small Business Development Center.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-11543 Filed 5-20-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 79-17; Notice 39]

New Car Assessment Program; Deformable Moving Barrier Crash Test Results and Analysis; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period on a request for comments on the results and analysis of

a series of frontal crash tests conducted with a deformable moving barrier (DMB) which was published on March 29, 1988. The comment period was scheduled to close on May 31, 1988. NHTSA has received a petition asking that the comment period be extended to allow commenters more time to obtain and analyze the DMB data and analysis. NHTSA has concluded that it is appropriate and desirable to allow interested parties more time to comment on the DMB report. Accordingly, the comment period for that report is extended for 45 days.

DATE: The comment period for Docket No. 79–17; Notice 38 is extended so that it closes July 15, 1988.

ADDRESSES: Comments should refer to Docket No. 79–17; Notice 38 and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John M. Machey, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4798).

SUPPLEMENTARY INFORMATION: NHTSA published a request for comments on the results and analysis of a series of frontal crash tests conducted with a deformable moving barrier (DMB) at 53 FR 10182, March 29, 1988. The comment period for that notice was scheduled to close on May 31, 1988.

NHTSA received a petition from the Motor Vehicle Manufacturers Association of the United States, Inc., (MVMA) asking that the comment period be extended for 30 days because of delays in obtaining copies of the crash test reports and films.

NHTSA carefully considered the request and has concluded that it would be appropriate and beneficial to allow interested parties additional time to review the DMB materials. To that end, NHTSA has decided to extend the comment period on the DMB program beyond that requested by MVMA to an additional 45 days. The new date for the close of the comment period is July 15, 1988.

Issued on May 18, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–11536 Filed 5–20–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on June 8 & 9, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, June 8 and 8:00 a.m. on Thursday, June 9, 1988. The agenda will include the following topics:

Wednesday, June 8, 1988

Administration of Penalties
Tax System Redesign (TSR) Initiatives
Tax Forms Review Process
Use of Enforcement Statistics in Evaluating Employees
Implementing the 1986 and 1987 Tax Acts
Taxpayer Bill of Rights

Thursday, June 9, 1988

Legislative/Regulatory Process
General Discussion

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Rober F. Hilgen, Assistant to the Senior Deputy Commissioner no later than June 2, 1988. Mr. Hilgen may be reached on (202) 566–4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue, NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566–4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–11496 Filed 5–20–88; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 25, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Election of Vice Chairman

The Commission will elect a Vice Chairman for the term beginning June 1, 1988 and ending May 31, 1989.

2. Lawn Darts

The Commission will consider an additional regulatory option for lawn darts.

Closed to the Public

3. Enforcement Matter OS #3705

The Commission will consider issues related to enforcement matter OS #3705.

4. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

May 18, 1988.

[FR Doc. 88-11578 Filed 5-19-88; 12:24 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Wednesday, May 18, 1988

May 11, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, May 18, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Amendment of the Commission's rules relating to program exclusivity (Gen. Docket No. 87-24). Subject: The Commission will consider whether to adopt an Order modifying certain of its program exclusivity rules affecting the cable and broadcast industries.

Private Radio—1—Title: Amendment of Subpart C of Part 90 of the Commission's Rules to Permit Commercial Enterprises to be licensed Directly in the Special Emergency Radio Service.

Common Carrier—1—Title: In the Matter of Inquiry into the policies to be Followed in the Authorization of Common Carrier Facilities in the North Atlantic Docket No. 79-184. Summary: The Commission will consider whether to adopt a Report and Order concerning Common Carrier Facilities required to meet North Atlantic Telecommunications needs for the 1991-2000 period.

Note.—The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

Mass Media—1—Title: Public Notice concerning prohibitions against payola by broadcasters. Summary: The Commission will consider whether to issued a public notice regarding sections 317 and 507 of the Communications Act.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: May 12, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-11531 Filed 5-19-88; 10:28 am]

BILLING CODE 6712-01-M

Corrections

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 87-2-85CD]

Cable Royalty Fund Fees; Distribution Proceedings Amendment

Correction

In notice document 88-7856 beginning on page 11895 in the issue of Monday, April 11, 1988, make the following correction:

On page 11896, in the first column, under **SUPPLEMENTARY INFORMATION**, in the third line from the bottom, replace the last comma with a closing quotation mark and insert "should be amended to read 'MPAA—98.475%, Multimedia—0.825%,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8199]

Income Tax; Deductions in Excess of $5,000 Claimed for Certain Charitable Contributions of Property and Information Returns By Donees Who Make Certain Despositions of Donated Property

Correction

In rule document 88-10007 beginning on page 16076 in the issue of Thursday, May 5, 1988, make the following corrections:

1. On page 16079, in the second column, in the first complete paragraph, in the ninth line, "December 30" should read "December 20".

§1.170A-13 [Corrected]

2. On page 16081, in the third column, in §1.170A-13(c)(3)(iv)(B), in the second line, "of" should read "on".

3. On page 16082, in the second column, in §1.170A-13(c)(4)(iv)(A)(*2*), in the second line, "and (B)" should read "through (H)".

4. On the same page, in the third column, in §1.170A-13(c)(4)(iv)(D), the seventh line should read "paragraph (c)(4)(iv)(A)(*4*) of this section".

5. On page 16084, in the first column, in the undesignated paragraph following §1.170A(c)(7)(v)(C), in the eighth line, "contribution" should read "contributed".

§1.6050L-1 [Corrected]

6. On page 16085, in the second column, in §1.6050L-1(a)(2)(i), in the 21st line, "or" should read "of".

7. On the same page, in the same column, in §1.6050L-1(a)(3), in the first line, "*of*" should read "*for*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-83-87]

Deductions in Excess of $5,000 Claimed for Charitable Contributions of Certain Property

Correction

In proposed rule document 88-10008 beginning on page 16156 in the issue of Thursday, May 5, 1988, make the following correction:

§1.170A-13 [Corrected]

On page 16158, in the second column, in §1.170A-13(c)(4)(iv)(A), in the 10th line, after "after" insert "June 6, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-52-86]

Income Taxes; Information Reporting and Backup Withholding

Correction

In proposed rule document 88-4140 beginning on page 5991 in the issue of Monday, February 29, 1988, make the following corrections:

PART 1—[CORRECTED]

1. On page 5993, in the first column, in the authority citation for Part 1, in the last line, "1.6050-1" should read "1.6050A-1".

§1.6042-2 [Corrected]

2. On page 5994, in the first column, in §1.6042-2(a)(1)(ii), in the 21st line, "§1.6049-4(a)(1)(ii)" should read "§1.6049-4(c)(1)(ii)".

§1.6042-3 [Corrected]

3. On page 5994, in the second column, in §1.6042-3(b)(1), in the 11th and 12th lines, "§1.6042-3(b)(i)" should read "§1.6042-3(b)(1)".

§1.6042-5 [Corrected]

4. On page 5995, in the second column, in §1.6042-5(b)(3), in the second line, "3046" should read "3406".

§1.6044-6 [Corrected]

5. On page 5996, in the third column, in the undesignated paragraph following §1.6044-6(c)(1)(ii), in the seventh line, "6044(a)" should read "6044(e)".

§1.6049-4 [Corrected]

6. On page 5999, in the third column, in §1.6049-4(b)(1), in the 10th line from the bottom, "§1.6049(c)(1)(ii)" should read "§1.6049-4(c)(1)(ii)". Also, in the same column, in the same paragraph, in the last line, "requested" should read "regulations".

7. On page 6000, in the first column, in §1.6049-4(b)(3)(i), in the 34th line, "shall" was misspelled.

8. On page 6001, in the third column, in §1.6049-4(c)(1)(ii)(G), current paragraph (*43*) should be numbered (*44*) and a new (*43*) should be added to read as follows:

"(*43*) Organization of African Unity,"

§1.6049-5 [Corrected]

9. On page 6004, in the first column, in §1.6049-5(c)(4), in the last line, "§1.441-4(f)(2)(ii)" should read "§1.1441-4(f)(2)(ii)".

10. Also, in the same column, in the undesignated paragraph following §1.6049-5(c)(5)(ii)(E), in the last line, "preceding" was misspelled.

11. On page 6007, in the third column, in §1.6049-5(j)(1)(i)(C), in the first line, after "exchange" insert "that is registered as a national securities exchange".

12. On page 6009, in the first column, in §1.6049-5(j)(5), Example (7), in the 12th line, "to" should read "at".

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federal register

Monday
May 23, 1988

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1809 etc.

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1809, 1902, 1910, 1924, 1941, 1943, 1944, 1945, 1951, 1955, 1962, 1965

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to conform to the following provisions of the Agricultural Credit Act of 1987 (Pub. L. 100–233): Section 503—Participation of Federal Agencies; Section 512—Waiver of Mediation Rights by FmHA Borrowers; Section 602—Definitions; Section 603—Security for FmHA Real Estate Loans; Section 604—Additional Collateral; Section 605—Notice of Loan Service Programs; Section 606—Planting and Production History Guidelines; Section 610—Disposition and Leasing of Farmland; Section 611—Income Release; Section 612—Conservation Easements; Section 614—Homestead Protection; Section 615—Debt Restructuring and Loan Servicing; Section 616—Transfer of Inventory Lands; Section 617—Target Participation Rates; Section 618—Expedited Clearing of Title to Inventory Property; Section 620—Lease of Certain Acquired Property; and Section 623—Farm Ownership Outreach Program to Socially Disadvantaged Individuals. In addition, the FmHA proposes further amendments as follows: (1) Provide for Farm Ownership loans on leasehold interests in Hawaii; (2) remove obsolete and unfunded loan program regulations; (3) add more guidance on what is a nonfarm enterprise; (4) require financial information from all members of an entity and delete the reference to principal members; (5) protect historic sites and correct health or safety problems; (6) clarify the use of the word character; (7) require that balloon payments be adequately secured by hard security other than just a crop lien; (8) remove the regulations for the restrictions on using operating loan funds for the production of surplus agricultural commodities; (9) define a feasible Farm and Home Plan and provide guidance for determining family living expenses; (10) require each State to issue annually unit prices for farm commodities; (11) consider a husband and wife as a joint operation when they both sign the application; (12) make other necessary clarifications and editorial changes. The need for the action is to: Implement certain provisions of the Agricultural Credit Act of 1987, strengthen, clarify and correct noted weaknesses in existing regulations; and remove regulations for obsolete and unfunded loan programs. The intended effect is to: (1) Facilitate keeping borrowers on the farm or ranch to the maximum extent possible; (2) respond to rural farm problems throughout the Nation; (3) to minimize losses under farmer program loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; (6) provide more guidance to the FmHA field staff.

DATE: Comments must be submitted on or before June 22, 1988. The 30-day comment period is established to enable the Agency to comply with the legislative requirement to publish final rules within 150 days.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. The Preliminary Regulatory Impact Analysis Statement [PRIA] and all written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447–4671.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Summary of PRIA

The USDA has developed a Preliminary Regulatory Impact Analysis (PRIA) due to the effect the Agricultural Credit Act of 1987 will have on the economy. There are a number of requirements in the Act, however the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document.

The Agricultural Credit Act of 1987 provides for substantial revisions in loan servicing procedures of FmHA. The objectives of this impact analysis were to summarize the revised loan restructuring procedures and estimated costs and budget impacts from restructuring with debt write-down.

The restructuring provisions of the Act provide for a write-down of debt to the recovery value of collateral where the return to the Government under the restructured debt is at least as great as the return from involuntary liquidation.

About 118,000 FmHA borrowers were delinquent or in some other default status in early 1988, including 16,000 borrowers who have been accelerated. FmHA estimates that about 37,000 of these borrowers will be able to resolve repayment problems through normal servicing procedures, including subordination, rescheduling, and deferral. The remaining 81,000 borrowers would be eligible for consideration of restructuring with write-down of debt.

Based on an earlier survey of borrowers eligible for restructuring with write-down of debt, an estimated 20 percent of the 81,000 borrowers are able to show repayment on remaining debt and qualify for the write-down. About two-thirds of the borrowers are unable to show repayment ability on remaining debt and would be rejected for write-down. The remaining potential write-down borrowers would not be considered for write-down because their debt was less than the estimated recovery value.

Borrowers who qualified for the write-down are characterized as follows:

a. A large proportion of their debt was with FmHA.

b. The FmHA loans were greatly undersecured, or there was no net value in the security for FmHA, which meant that a large percent, or all, of their FmHA debt would be subject to write-down.

c. A substantial portion of borrower income was from off-farm employment.

Adjustments in debts by other lenders could increase the number of borrowers able to cashflow with write-down of FmHA debt. For other FmHA borrowers with a large share of their debt owed

other lenders restructuring could take place through bankruptcy.

For borrowers able to cashflow with the write-down, the average write-down of FmHA debt to recovery value totaled $167,000 on average. For borrowers unable to cashflow with the write-down, expected loan losses totaled $123,000 on average.

Losses for the agency are estimated to total $2.7 billion for borrowers able to cashflow and qualify for the write-down and $6.7 billion for borrowers who are unable to show repayment ability with the write-down. Recapture provisions may reduce estimated losses by about $0.6 billion.

These estimated losses to a large extent have already been incurred by the agency and are not the result of restructuring. The losses due to deterioration in the market value of collateral and lien position have already been incurred, and losses due to the expense of involuntary liquidation are included in the write-down, subject to recapture, or are part of expected losses for borrowers denied restructuring.

Budget impacts of loan losses for FmHA are measured in outlays and budget authority. Outlays measure net cash disbursements. For the loan programs, outlays are the difference between repayments on existing loans and disbursements on new loans. Budget authority is the commitment of Treasury funds. For the loan programs, budget authority includes realized losses due to interest subsidies, write-off, and other losses.

Outlays will be affected to the extent loan repayments are increased or decreased with revised servicing and restructuring. Since outlays currently reflect reduced repayments by borrowers under severe financial stress and delinquency, implementation of the write-down provisions is not estimated to have substantial impact on current outlay levels.

Budget authority may be dramatically affected by the revised servicing procedures as loan losses will tend to be recognized up front with the write-down rather than after liquidation and delayed debt settlement. Requested reimbursement for losses may be increased from about $1.0 billion in fiscal year 1989 to a substantial share of the total estimated write-down and loan losses of $8.7 billion in fiscal year 1990.

Since these provisions are required by the Act, other alternatives were not considered.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Section 534 of the Housing Act requires rules issued pursuant to Title V of the Housing Act of 1949 to be first published for public comment unless the rule is certified to be issued on an emergency basis. Certain of the proposed rules in this rulemaking are issued, in part, under the authority of the Housing Act of 1949. Because of the statutory time requirements in the Agricultural Credit Act of 1987, the Administrator certifies that there is an emergency basis for shortening the comment period from 60 to 30 days.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how we will continue to do business with our farm borrowers. Due to the great number of changes and to expedite the implementation of the "Act," we are publishing the revisions in FmHA regulations in several separate issuances. They are as follows:

1. Section 607 County Committees.

Allows one member of the County Committee to be an FmHA Farmer Program borrower and removes the requirement that a member must derive the principal part of income from farming.

This was implemented March 24, 1988.

2. Section 608 Administrative Appeals.

Requires FmHA to set up a separate independent nationwide appeals system for all FmHA borrowers.

3. A portion of Section 611 Income Release.

Provides for the release of up to $18,000 of normal income security for family living and farm operating expenses to borrowers that have been accelerated but not foreclosed.

The FmHA field offices were notified on February 2, 1988, to implement this provision immediately.

4. Section 613 Interest Rate Reduction Program; Demonstration Project for Purchase of System Land.

Provides for an FmHA guarantee of up to 95 percent of the loan if there is an interest rate reduction for the loan for Farm Credit Administration (FCA) inventory property when the Farm Credit Administration District has received financial assistance from the Farm Credit System Assistance Board.

FmHA and FCA signed a Memorandum of Understanding for this on March 3, 1988.

5. Section 619 Payment of Losses on Guaranteed Loans.

Provides for FmHA to pay a lender estimated losses either through debt write-down or reorganization through bankruptcy for FmHA guaranteed loans.

6. Section 711 Improvement of Secondary Market Operations for Loans Guaranteed by the Farmers Home Administration.

Provides the pooling of notes for issuing pooling certificates for sale on the secondary market (Aggie Mae).

Section 803 Sale of Rural Development Notes.

Allows the borrower who signed a note the opportunity to purchase the note when the note is offered for sale. This is for community programs. It was implemented on March 14, 1988.

7. Title V—State Mediation Programs.

Subtitle A—Matching Grants for State Mediation Programs

Section 501 Qualifications.

Establishes the procedures and requirements for FmHA to certify a State for a State mediation program.

Section 502 Matching Grants to States.

Establishes the procedures for receiving grants from FmHA for State mediation programs.

8. These Proposed Rules.

There are a number of sections of the Agricultural Credit Act of 1987 ("Act") that are very important to FmHA farm borrowers. The Act requires their implementation. It will allow many farm borrowers to continue to farm and will, at the same time, assist in minimizing losses to the Government.

Since most of these sections of the Act are interrelated, they are combined into one separate issuance of regulations. Some of the Sections require only minor changes in the regulations while others are major changes. The debt write-down provisions involve major additions to the regulations.

Debt write-down will be used to service delinquent farm borrowers who cannot cash flow through the use of FmHA's other existing servicing options. Borrowers who qualify for and obtain a write-down will become "current" and will therefore, so long as they remain current, be eligible for FmHA Farmer program loans. Borrowers whose applications for a write-down are rejected, will, after full consideration and appeal, be accelerated forthwith. Since FmHA's regulations allow delinquent borrowers who cannot cash flow to qualify for distressed farmer operating loans only if such borrowers have not been accelerated, the effect of acceleration after consideration, as described above, will be to deny such continuation policy operating loans to those borrower who have been rejected for a write-down and whose accounts have been accelerated.

Borrowers who are accelerated may still qualify for leaseback and dwelling retention program assistance.

The proposed regulations pertain only to FmHA Farmer Program (FP) loans. FP loans are Operating (OL) Loans, Farm Ownership (FO) Loans, Soil and Water (SW) Loans, Emergency (EM) Loans, Economic Emergency (EE) Loans, Softwood Timber (ST) Loans, Special Livestock (SL) Loans, Recreation (RL) Loans; Economic Opportunity (EO) Loans and Rural Housing Loans for farm service buildings (RHF).

Significant Amendments and additions to the Regulations are as Follows

1. 7 CFR Part 1910, Subpart A, 7 CFR Part 1943, Subpart A, and 7 CFR Part 1955, Subparts B and C—FmHA will reserve Farm Ownership loan funds and inventory farms for the socially disadvantaged. FmHA, in cooperation with other agencies, will establish an outreach program to encourage the acquisition of FmHA inventory farm property by socially disadvantaged individuals. These provisions implement sections 617 and 623 of the Act.

2. 7 CFR Part 1924, Subpart B has been revised to provide guidance to County Supervisors concerning planting and production history when the applicant's past production has been affected by natural disasters. This provision implements section 606 of the Act. County Supervisors will be required to inform borrowers that they are entitled to receive releases for essential family living and farm operating expenses and will be required to complete Form FmHA 1962–1 for this purpose. This provision implements section 611(f)(6) of the Act.

3. 7 CFR Part 1941, Subpart A, 7 CFR Part 1943, Subparts A and B, and 7 CFR Part 1945, Subpart D have been revised to allow the same collateral for two or more loans made, insured or guaranteed, so long as the outstanding amount of the loans does not exceed the total value of the security. These provisions implement section 603 of the Act. 7 CFR Parts 1941, Subpart A, 1943, Subparts A and B, and 7 CFR Part 1962, Subpart A and 1965, Subpart A have also been revised to prevent FmHA from seeking additional collateral when the borrower is current in loan payments. These provisions implement section 604 of the Act.

4. 7 CFR Part 1951, Subpart S—Farmer Program Account Servicing Policies and other related regulations as applicable.

This proposed regulation is added. Previously, the major FmHA FP loan servicing programs were dispersed through various regulations. The new regulation will combine the existing loan servicing programs as modified and include the significant loan servicing requirements of the Agricultural Credit Act of 1987 (ACT). This will make it easier for the FmHA field staff and borrowers to use the new reorganized regulation.

A. Notice of Primary Loan Service Programs.

This subpart requires FmHA to provide a FP borrower who is delinquent 180 days, a written summary of the primary and preservation loan service programs. Most delinquent borrowers will receive a cover letter (Exhibit A of Subpart S of Part 1951 of this chapter and published following Subpart S) which informs borrowers they are seriously delinquent in their payments and that they can apply for loan servicing. Unlike FmHA's previous procedures (50 FR 45740, November 1, 1985) implementing the injunction in the *Coleman v. Block* decision, FmHA will not initiate the adverse action process contained in Forms FmHA 1924–25 and 1924–26 against borrowers who are simply delinquent. These borrowers will first have the opportunity to apply for loan servicing and be informed of the County Supervisor's decision concerning eligibility for loan servicing. FmHA will initiate the adverse action process providing borrowers with an opportunity for a meeting and hearing *only* if it rejects their servicing request.

FmHA intends to eliminate Forms FmHA 1924–14, 1924–25 and 1924–26 and replace them with Exhibit A, Attachments 1–10 of Subpart S of Part 1951 of this chapter and published with Subpart S. Borrowers will *not* receive all of these attachments. Different attachments apply to borrowers who have been accelerated but have *not* requested loan servicing (Attachments 3, 3A, and 4); borrowers with non-monetary defaults and when a prior lienholder or junior lienholder is foreclosing (Attachments 5 and 6); borrowers rejected for loan servicing (Attachments 7 and 8); and borrowers who do not apply for loan servicing (Attachments 9 and 10).

The initial notice (Exhibit A) to delinquent borrowers with attachments (1 and 2) provides:

1. A summary of:

(a) Consolidation and rescheduling of loans,

(b) Reamortization of loans,

(c) The reduction of interest rates for operating and farm ownership loans to the limited resource interest rate,

(d) Deferral of FmHA loan payments (including softwood timber and conservation easements),

(e) Write-down of FmHA debt,

(f) Dwelling retention,

(g) Leaseback—buyback of the farm.

2. The requirements for applying for these programs.

3. The timeframes for the borrower to request debt restructuring and loan servicing and timeframes for FmHA to respond to such requests. The borrower has 45 days after notice to make a request and FmHA has 60 days to respond.

4. An attachment used to request such programs.

5. A brief summary of the borrower's right to appeal. Exhibit A, Attachments 1–10 of Subpart S of Part 1951 of this chapter, will also notify borrowers of appeal rights as applicable to their situation. FmHA will only initiate liquidation action after borrowers have the opportunity to apply for loan servicing including debt write-down and appeal all adverse actions.

6. How to request a copy of FmHA regulations.

The major purpose of this program is to minimize losses to the Government and assist farmers to continue their farming operations. This is accomplished through the use of primary and preservation loan service programs. The primary loan service programs are as follows:

1. *Loan consolidation.* Combining two or more of the same type loans. For example, Operating (OL) loans can be combined with other Operating loans, and Farm Ownership (FO) loans can only be combined with other Farm Ownership loans.

2. *Loan rescheduling.* Rewriting the rates and/or terms of production-type loans. The repayment period for production-type loans can be rescheduled up to a maximum of 15 years.

3. *Loan reamortization.* Rewriting the rates and/or terms of real estate loans. The repayment period for the revised loan can be up to 40 years but cannot exceed 40 years from the date of the original note.

The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of consolidation, rescheduling and reamortization (the date the new note is signed by the borrower).

4. *Interest rate reduction.* Lowering interest rates to the lowest rate permitted by law for a particular loan type. For instance, the lowest rate for an OL limited resource loan is 3 percent below the regular rate. Regular rates are determined by the Government's cost to borrow money, and these rates vary with the financial market.

5. *Deferral.* To delay, on a temporary basis, payments of principal and interest on loans. FmHA may defer payments for up to 5 years. The borrower must show that he/she cannot now pay essential family living expenses, maintain essential chattel and real estate and meet scheduled payments on all debts and that this problem is temporary. The borrower's Farm and Home plan must show that payments on the deferred debt can be resumed at the end of the deferral period. Section 331–B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–b) requires interest to accrue at the lower rate of either note rate of the loans being deferred or the current rate.

Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization and/or interest-rate reduction will not provide a feasible plan. This policy is contained in FmHA s existing deferral regulations.

Note.—If a borrower is not eligible for a five-year deferral, FmHA will consider the borrower for the Softwood Timber program. This is a *special deferral* program whereby marginal land, including highly erodible land and pasture, can be planted in softwood timber. The amount of debt cannot exceed $1,000 per acre and can be deferred for up to 45 years. Interest charges will accrue and be added to the loan principal at the end of the deferral period. Payment on the deferred debt plus accrued interest must be made when the timber is harvested and sold by the borrower. Regulations involving the Softwood Timber program are presently located in 7 CFR 1951.46. In the proposed rules, these regulations are contained in Exhibit G of Subpart S of Part 1951.

Also, when the borrower is not eligible for a five-year deferral, FmHA considers the borrower for a conservation easement authorized by section 1318 of the Food Security Act of 1985 (Pub. L. 99–198) and amended by section 612 of the Agricultural Credit Act of 1987 (Pub. L. 100–233). FmHA published proposed rules on conservation easements on January 15, 1987 (52 FR 1706). FmHA proposes to consider conservation easements another primary loan service program. The proposed rules involving this program are contained in Exhibit H of Subpart S of Part 1951.

Major Points: (1) The land must be suitable for conservation, recreation and/or wildlife habitat purposes and secures an FmHA loan that was closed before December 23, 1985. (2) The land must be wetland, highly erodible or environmentally important upland that, except for wetland and wildlife habitat, was row cropped for the three years prior to December 23, 1985. (3) FmHA may reduce the debt in exchange for an easement on a portion of the farm. (4) An easement review team will review each site and make a report to FmHA. (5) The term of the easement must be for a minimum of 50 years. (6) An enforcement authority will assure that the purpose of the easement is accomplished. (7) The borrower cannot farm the easement land during the term of the easement.

7. *Debt write-down.* Reducing the amount of debt owed by a borrower. Debt write-down can be done by FmHA through the use of Conservation Easements (discussed above) or through a reduction of loan principal and/or accrued interest on the loan, to a point equal to the net recovery value FmHA would receive from an involuntary liquidation of the collateral. The "collateral" is the property that was pledged or mortgaged to FmHA in order to secure loans received by the borrower. The writing down of the loan principal and/or interest charges means a debt write-down to a level where loans from all creditors plus interest charges can be paid as scheduled and farm operating and family living expenses can also be paid as planned. If the borrower is eligible for the FmHA debt write-down program, the debt will be written down to the point where the borrower has a plan of operation that will meet the requirements set forth above. Such a plan is called a "feasible plan." The debt write-down cannot be an amount that would reduce the debt to less than the net recovery value from an involuntary liquidation of the property serving as security for the debt being written down. NET RECOVERY VALUE IS THE FAIR MARKET VALUE OF THE COLLATERAL, AS DETERMINED BY A QUALIFIED APPRAISER, LESS THE GOVERNMENT'S COST OF FORECLOSING ON OR LIQUIDATING THE COLLATERAL.

While any borrower whose accounts are delinquent by 180 days has a right to be notified and "considered" for this relief, it will be given only to those who genuinely cannot repay their loans as originally made or as modified by other primary loan servicing programs. The proposed regulations require FmHA to consider borrowers who are not delinquent or who are 30 days delinquent for the primary loan servicing programs short of write-down. The borrower will be expected to use all resources available in an effort to repay the loans before write-down of debt will be granted. These policies minimize the losses to the Government, and keep the farmer operating. Borrowers who receive primary loan servicing options short of write-down will be able to appeal this decision. If they become delinquent in their revised loan payment schedule, they will again be notified of the primary and preservation loan service programs and will have another chance to obtain a write-down.

B. Eligibility for Primary Loan Servicing

Upon receipt of properly completed application forms by the FmHA County Supervisor, the County Supervisor must determine that:

(1) The borrower's financial difficulty is due to conditions beyond the borrower's control, such as:

(a) Natural disaster declared by the President or Secretary of Agriculture;

(b) Illness in the family;

(c) Loss of off-farm income;

(d) Depressed economic conditions in local agriculture.

Note.—Financial difficulty is not considered due to conditions beyond the borrower's control if the borrower has sufficient income and/or assets to make payments to FmHA, and the borrower is not making scheduled payments.

(2) The borrower has acted in good faith in dealings with FmHA. This means the borrower is attempting to live up to the agreements with FmHA and is maintaining the property which is collateral for FmHA loans. Good faith requirements are set forth in detail in this subpart.

(3) The borrower has a feasible plan of operation.

Within 60 days after receiving the request for loan servicing, the County Supervisor will take the information the borrower has provided with the application and calculate the net recovery value of the collateral.

If the FmHA County Supervisor concludes that the Government has a better net recovery by writing down the debt than can be obtained by foreclosure and that the other loan servicing programs will not be sufficient to allow the borrower to continue farming, the borrower will be entitled to a write-down. The borrower will receive a copy of the County Supervisor's analysis along with an appointment date to take adjustment action on the debt. As a condition of this relief, the County Supervisor will require the borrower to sign a "shared appreciation agreement." The agreement is contained in Exhibit D of Subpart S of Part 1951 and published following Subpart S. This is an agreement that requires the borrower to repay a portion of the amounts written down, depending on the appreciation of the real estate property during the 10 years following debt restructuring.

FmHA can reject a borrower's write-down request only after FmHA has attempted mediation alternatives if the borrower has a substantial debt with other creditors, or participates in a voluntary meeting of creditors. If other creditors do not wish to participate, the borrower can still obtain a write-down so long as FmHA obtains a greater net recovery from the write-down than it would from liquidation.

FmHA may request participation in the State mediation program, where available, or may request informal negotiation with other creditors for required debt adjustments. FmHA's proposed regulations implement sections 503 and 512 of the Act.

Certified State Mediation Program. The mediation program requires FmHA to participate with farm borrowers, and with their other creditors where such exist, to reach agreements on debt adjustments needed to keep the farmer in business.

Voluntary meeting of creditors. A voluntary meeting of creditors is for FmHA to participate with farm borrowers and their creditors in an effort to reach debt adjustments necessary to keep the farmer in business.

Mediation Training. The FmHA State Director will arrange for training in mediation techniques for employees delegated authority to represent FmHA in mediation. This training shall include communication skills, negotiation skills, and analysis of primary loan service programs.

Waiver of Mediation Rights. FmHA cannot require a borrower to waive any right under the agricultural loan mediation program as a condition for making or guaranteeing an FmHA loan.

The borrower has the right to appeal the FmHA decision indicating that the best net recovery is in liquidation. Borrowers whose debt cannot be restructured, will have the right to purchase the property at the net recovery value, subject to recapture by FmHA of part of the profit if the property is sold within two years. The recapture agreement is contained in Exhibit C of Subpart S of Part 1951 and published with Subpart S. The net recovery value is usually substantially below the present market value of the property.

C. Notice of Preservation Loan Service Programs

The 180-day notice to delinquent borrowers also provides a summary of the preservation loan service programs including homestead retention (dwelling retention) and leaseback/buyback of farmland, and tells borrowers how to apply for these programs. Attachments 3, 3A, 7, and 9 of Exhibit A of Subpart S of Part 1951 of this chapter also notify borrowers at various stages of FmHA's procedures that they can apply for these programs. These attachments are published with these proposed regulations following Subpart S of Part 1951.

1. Dwelling Retention

If owner-borrowers do not enter into an agreement with FmHA to be considered for dwelling retention, owner-borrowers will receive another notice of the availability of dwelling retention within 30 days after FmHA acquires title to the property. Owner-borrowers will have 90 days from the date FmHA acquires the property to notify the County Supervisor, in writing, of their intention to exercise dwelling retention. All owners of dwelling retention property in inventory as of January 6, 1988, have already been advised that they may be eligible for dwelling retention when FmHA finalizes the dwelling retention program regulations.

FmHA's proposed revision of the dwelling retention regulations are contained in Exhibit I of Subpart S of Part 1951. FmHA first implemented this program on March 18, 1986, (51 FR 9174) 7 CFR Part 1955, Subpart B.

The major revisions implementing the Act are: (1) An owner-borrower may apply and enter into an agreement to lease with an option to purchase before or after FmHA acquires title to farm property. (2) A borrower may apply regardless of how FmHA acquires the property. (3) Homestead acreage is increased from 5 acres to 10 acres. (4) The requirement of gross annual farm/land sales of at least $40,000 has been deleted. (5) The purchase price is the market value when an applicant exercises the option. The borrower may request debt settlement for the existing balance of the FmHA debt.

Dwelling Retention applies when the primary loan service programs cannot help the borrower and FmHA owns the property or is about to acquire it from the borrower. The proposed regulations authorize FmHA to enter into a pre-acquisition agreement with owner-borrowers before FmHA actually acquires the property which will take effect if and when the property comes into FmHA inventory.

The proposed regulation provides that only former owners of dwelling retention property have rights under the dwelling retention program. While the term "borrower" is used several places in section 614 of the Agricultural Credit Act of 1987, Pub. L. 100–233 ("the Act"), section 614(c)(4)(A) requires that the borrower must also have been an owner as opposed to a lessee of the dwelling retention property.

The dwelling retention property is statutorily defined in section 614 to encompass the principal residence and adjoining property plus "a reasonable number of farm outbuildings located on adjoining land that are useful to the occupants of the homestead, and no more than 10 acres of adjoining land that are used to maintain the family of

the individual." The proposed regulations do not contain a requirement that the dwelling retention property must be located on the borrower's farm, although it must have been security for a Farmer Programs loan.

All leases will contain an option to purchase. No rights under the agreement can be assigned or transferred by operation of law, or otherwise, except that in case of the death or incompetency of the owner-borrower, such rights may be transferred to the owner-borrower's spouse if the spouse assumes the agreement.

Absent extenuating and compelling circumstances, FmHA does not intend to evict any owner-borrower from the homestead within the 90-day period after FmHA acquires title to the dwelling retention property. FmHA will not repair or improve the property during this 90-day period, except to the extent necessary to preserve the value of the Government's interest in the property.

An owner-borrower will be notified separately about both dwelling retention and leaseback/buyback and can separately apply for each program. As noted in connection with the discussion of leaseback/buyback, below, in the case of a principal residence which is subject to competing claims from different individuals under leaseback/buyback and dwelling retention, the dwelling retention program will take precedence.

2. Disposition and Leasing of Farmland (Leaseback/Buyback)

The proposed regulations implementing the Act's changes to this program are contained in 7 CFR Part 1951, Subpart S, Exhibit J and 7 CFR 1955.66(d). FmHA first implemented the leaseback/buyback program on April 21, 1987, (51 FR 13437).

Section 610 of the Agricultural Credit Act of 1987, Pub. L. 100–233 ("the Act") revised the requirements for the leaseback/buyback program. There are two major branches of this program. One, dealing with leaseback/buyback rights of Indian tribes and Indian tribe members on land within the tribe's reservation, will be covered in 7 CFR 1955.66(d) and will be discussed below. The other major part of the leaseback/buyback program deals with leaseback/buyback rights of non-Indian, non-tribal owners of land which served as security for an FmHA farm program loan. Property acquired as security for a non-program loan (*i.e.*, credit sale to an ineligible applicant or transfer to an ineligible transferee) is not subject to leaseback/buyback since these are not farmer program loans.

Under the leaseback/buyback program, an owner of land which secures a farmer program loan will receive information about this program from FmHA in the notice which is sent when a borrower is 180 days delinquent on his or her FmHA loan. Between that time and the date FmHA acquires the property, the owner may enter into an agreement with FmHA to lease or repurchase the security property if and when FmHA acquires title to it. The owner will have to notify the County Supervisor as to whether the owner wants to lease or repurchase the security property if and when FmHA acquires title to it. Before entering into a pre-acquisition agreement, the County Supervisor will have to determine that the owner is eligible for leaseback, if the owner has indicated an intention to lease the property back. If the owner wants to repurchase the property, if and when FmHA acquires it, the County Supervisor will enter into a pre-acquisition agreement with the owner only if the County Supervisor determines that it is likely the owner will have repayment ability at the time FmHA acquires the property. This will necessarily require a projection about future repayment ability and since circumstances can change between the time FmHA enters into the pre-acquisition agreement and when the property is actually acquired, there can be no guarantee that FmHA will make a credit sale to the owner when the property is finally acquired.

The pre-acquisition agreement will have a provision providing that it will automatically terminate within 2 years of the date of the agreement if FmHA has not acquired the property by that time. A time limit is desirable to avoid confusion surrounding long term executory agreements. If the property is acquired after the pre-acquisition agreement terminates, the owner will receive notification of leasaback/buyback within 30 days of FmHA's acquisition of the property. In addition, the owner will be advised that if the property must have wetland and/or floodplain deed restrictions, the property will be subject to these restrictions when it is leased or repurchased.

If the owner does not desire to enter into a pre-acquisition agreement with FmHA, the owner will be notified about leaseback/buyback within 30 days after acquisition. The owner will be given 180 days from the date of FmHA's acquisition to elect to exercise either leaseback or buyback. In addition the owner, if the loan was made to the owner as an individual, will be asked to notify the owner's spouse and children who are actively engaged in farming that they have 190 days from the date of FmHA's acquisition to elect to lease or purchase the property. If the owner was an entity, the owner will have to notify the partners, shareholders, joint operators or members within this 190-day period that they can elect to lease or purchase the property. Entity members are only eligible for leaseback/buyback if they are actively engaged in farming and all the entity members are related to the owner by blood or marriage. FmHA proposes to place the notification responsibility on the former owner since FmHA frequently does not have complete name and/or address information on the borrower's children, spouse, or entity members.

If the owner was leasing the property to a family-size farm operator after the FmHA acquired the security property, FmHA will notify the lessee of the lessee's rights to leaseback/buyback. In some cases, FmHA will not know the name and address of the last lessee so the former owner will be requested to supply FmHA with this information.

The Act uses the terms "owner", "borrower" and "borrower-owner" to describe who is eligible for leaseback/buyback. In some cases, it is possible that the borrower in the sense of being personally obligated on an FmHA farmer program loan may not be the same person as the owner of the fee interest in the security property. For example, a parent who has turned the farm over to a child but still holds title may agree to mortgage the farm for the child's farmer program loan. In such cases, FmHA believes that it was the intent of the Act to give the first leaseback/buyback rights to the person who held fee title to the security.

It is also possible that a person who opts for leaseback/buyback of the entire farm will be a different individual from the former owner who elects dwelling retention for the farm residence. The Act does not indicate which program will take precedence. FmHA believes that allowing the owner of a long term residence to retain possession (*i.e.*, the dwelling retention program) of their home should take priority over the leaseback/buyback rights of someone who was not the owner-occupant of the dwelling.

The proposed regulation provides that leaseback/buyback is only applicable to those farms which it acquired into inventory since January 6, 1988, (the date of the Act) plus those farms which it acquired before that date where leaseback/buyback rights under the former leaseback/buyback regulation were not given to the former owner.

Unlike dwelling retention, for which the Act specifically requires notification to former owners of all dwelling retention property in inventory as of January 6, 1988, there is no comparable notification requirement for leaseback/buyback. Thus FmHA proposes that, with the exception of those former owners who did not receive leaseback/buyback rights under FmHA's existing regulation, leaseback/buyback is prospective from January 6, 1988.

3. Leaseback/Buyback for Indian Tribes and Tribal Members

Section 610(b)(1)(D) of the Agricultural Credit Act of 1987 creates a comprehensive leaseback/buyback program for certain land located within Indian reservations. In order to be eligible for this special Indian leaseback/buyback program, the former borrower-owner must have been either (1) the Indian tribe that has jurisdiction over the reservation in which the security property is located, or (2) a member of such Indian tribe. In addition, the security property must be located within the boundaries of an Indian reservation as that term is defined in section 610(b)(1)(D)(ii) of the Act. Because land which is subject to the special Indian leaseback/buyback provisions is subject to being removed from State and local tax rolls, the precise determination of what is covered by this program is particularly important.

The special Indian leaseback/buyback program only arises after "the period in which the right to purchase or lease such real property provided in clauses (i) and (ii) of subparagraph (A) [of section 610 of the Act] has expired." The time periods referenced in subparagraph (A) are the 180-day period from the date of acquisition for the former owner and the 190-day period for the spouse or child of a former owner who is actively engaged in farming. The former owner and the spouse and children of the former owner who are actively engaged in farming will receive notification of leaseback/buyback in the same manner as non-Indian borrowers. The statute does not give any priority to the immediate previous operator. Once the 190-day period has expired, section 610(b)(1)(D)(i) requires the Secretary of Agriculture to "dispose of or administer the property only as provided for in this subparagraph."

Furthermore, in determining whether security property is included in the special Indian leaseback/buyback program it appears that only reservation land formerly owned by the tribe or a tribe member is considered. Land which is in a reservation and owned by an Indian family entity is not included in the special leaseback/buyback program and will be subject to FmHA's non-Indian leaseback/buyback program. An entity is neither the tribe (unless it is wholly owned subsidiary of the tribe) nor a member of the tribe. For land that is included in the special Indian leaseback/buyback program, however, Indian corporate entities may receive a priority in leasing or buying the land.

Section 602 of the Act defines a borrower as a "farm borrower who has outstanding obligations to the Secretary under any farmer program loan * * *" While section 610(b) appears to use the terms "borrower," "borrower-owner," and "owner" interchangeably (see the discussion in connection with the non-Indian leaseback/buyback program), it seems clear that section 610 was meant to be limited to FmHA farmer program loans. FmHA has not and is not now proposing to classify Indian Land Acquisition Loans made pursuant to 25 U.S.C. 488–492 as loans for which leaseback/buyback rights will be given. While 25 U.S.C. 492 incorporates by reference the interest rate and some of the administrative provisions of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921, *et seq.*, (the "Con Act") Indian Land Acquisition loans are not farmer program loans either in purpose or under the Con Act.

Finally, the Act provides that if security property covered by the special Indian leaseback/buyback program is not purchased or leased and the "Indian tribe having jurisdiction over the reservation within which the real property is located is unable to purchase or lease the real property, the Secretary shall transfer the real property to the Secretary of the Interior who shall administer the real property as if the real property were held in trust by the United States for the benefit of the tribe." The proposed regulations require the FmHA State Director to make the determination, subject to the ability to appeal under the FmHA Appeal Procedure, as to whether or not the tribe is able to purchase or lease the property.

Additional Proposed Changes to FmHA Regulations

1. 7 CFR Part 1955, Subpart A

Allows FmHA approval officials to contract for the services of attorneys for clearing title or foreclosed property in inventory. This implements section 618 of the Act.

2. 7 CFR Part 1955, Subpart B

Allows FmHA to lease facilities in inventory at a nominal rent to public or private nonprofit organizations. This relates to the Community Facilities Loan programs. This implements section 620 of the Act.

3. 7 CFR Part 1955, Subpart C

Allows FmHA to transfer inventory property for conservation purposes to any Federal or State agency without reimbursement. This implements section 616 of the Act.

4. 7 CFR Part 1962, Subpart A

Revised to establish guidelines and a list of expenditures for which FmHA will normally release crop proceeds. An additional revision clarifies that FmHA will release Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments for this purpose. However, proceeds from the sale of real estate (and equipment) will not be released for essential family living and farm operating expenses since this is a statutory prohibition. See proposed rules in Subpart A of Part 1965 of this chapter.

A More Detailed List of the Proposed Amendments is as Follows:

Part 1809—Appraisals

Subpart A—Appraisal of Farms and Leasehold Interest

Section 1809.1 is amended to propose rule to remove Recreation (RL) loans from the paragraph as this program is removed from FmHA regulations.

Part 1902—Supervised Bank Accounts

Subpart A—Loan and Grant Disbursements

The agency proposes to revise Subpart A of Part 1902 of the regulations to delete the requirement that the original cancelled check must be returned by the bank when countersigned checks are used and keep the regulation in line with evolving technology in the commercial banking industry.

Section 1902.1(i) is revised to change "bank" to "financial institution" and delete references to Exhibits C & D as they are being deleted from this regulation.

Sections 1902.1(j) and 1902.2(a)(5) are revised to delete reference to Exhibit C.

Sections 1902.1(k) and 1902.2(f) are revised to delete reference to Exhibit D.

Section 1902.2 (a)(2), and (b), and § 1902.3(a) are revised to require that Forms FmHA 440–57 or 1944–57 be submitted to the State Office rather than the Finance Office.

Section 1902.2(e) has been revised to change "return" to "process."

Section 1902.3(b) has been revised to change "Finance Office" to "State Office."

Section 1902.3(c)(1) is revised to change "bank" to "Financial Institution."

Section 1902.14 (a) and (b) are revised to provide that financial institutions using a truncation process will not be required to return the original cancelled check with the bank statement to FmHA and/or the borrower.

Section 1902.14(c) is added to provide that financial institutions using a truncation process will be required to provide a microfilm copy or other reasonable facsimile of the original cancelled check when requested by FmHA, and that no charge will be made to FmHA or the borrower's account for this service.

Exhibit B is revised to change "bank" to "Financial Institution," and to modernize certain legal expressions.

Exhibits C and D are deleted.

Part 1910—General

Subpart A—Receiving and Processing Applications

Section 1910.1 has been partially revised to delete references to recreation (RL) loans and to refer to *insured* section 502 and 504 RH loans.

Section 1910.3(a)(3)(i) has been revised to correct the title of Form FmHA 410–7.

Section 1910.3(b)(2) has been revised to apply only to RH applicants.

Section 1910.3(b)(3) has been revised to require farmer program applicants who are presently indebted to FmHA to complete Form FmHA 410–1. Current paragraph (3) has been renumbered to (4). This will assist in establishing a starting point for the timeframe allowed by law for processing applications. Section 1910.3(c) has been revised to differentiate between joint applications for SFH loans and for FP loans.

Section 1910.3(c) has been revised to exclude use of co-applicants for Farmer Program loans and to state that husbands and wives who jointly want a Farmer Program loan will be considered a joint operation.

Section 1910.3(d) has been revised to require information be obtained from cosigners, and when a cosigner will be required, the applicant will be requested to choose a cosigner. This will strengthen the test for credit elsewhere requirement.

Section 1910.3(e) has been revised to state that the applicant's spouse will not be automatically required to sign the note unless the spouse desires to be a co-applicant. This is in accordance with the Equal Credit Opportunity Act.

Section 1910.3(l) has been revised to change Subpart A to Subpart B of Part 1910.

Section 1910.4—The introductory paragraph has been revised to delete the references to the "New Full-Time Family Farmer and Rancher Development Committee" and Exhibit A of 1924–B of this chapter.

Section 1910.4(a) has been removed.

Section 1910.4(b) has been renumbered to (a) and partially revised to pertain only to RH loans and to clarify veteran's preference.

New § 1910.4(b) has been added to establish requirements for complete farmer program applications. This is necessary so that the applicant will be aware of the information necessary for submitting an application.

Section 1910.4(a) has been renumbered to (c).

Section 1910.4(c) has been renumbered to (d) and partially revised to provide guidance on assistance to socially disadvantaged individuals.

Section 1910.4(d) has been renumbered to (e) and revised to clarify that the County Committee will certify only eligibility.

Section 1910.4(e) has been renumbered to (f).

Sections 1910.4 (f) and (g) have been renumbered to (g) and (h).

Section 1910.4(h) has been renumbered to (i) and partially revised to require that applications for loans which are approved, but not funded, withdrawn or rejected, remain in an inactive file for 25 months after the end of the fiscal year in which they were received. FO, SW, OL and EM applications and applications for RH loans from persons who derive most of their income from farming will remain active for 12 months from the date they were received.

Section 1910.5(c)(6) has been added to state that applicants who have had previous FmHA debts settled will not be considered an unacceptable credit history.

Section 1910.6(a) has been revised to require that the applicant be reconsidered for eligibility, if additional information becomes available that indicates the original decision may have been in error.

Section 1910.6(b) has been revised to change the words "adverse decision" to "unfavorable decision."

Section 1910.6(d)(1) has been revised to provide for loan approval of OL, FO, EM and SW loans even if funds are not available.

Section 1910.6(g) has been added to include a waiver of the 15-day loan closing requirement when a title or lien search is required. Due to the timeframes allowed by law, this is necessary to allow the processing of loans without incurring the cost of a title or lien search until after the loan is approved.

Section 1910.8(e) has been deleted.

Section 1910.10(a) has been partially revised to be titled "Veterans," to delete reference to recreation (RL) loans, and to include RH loans.

Section 1910.10(b) has been renumbered to (a)(1) and revised for clarity.

Section 1910.10(c) (1) through (3) has been renumbered to (a)(2) through (a)(4).

Section 1910.10(b) has been revised to set preference standards for farmer program loans.

The title to § 1910.11(b) has been revised for clarity.

Exhibit A has been added for listing information necessary for a complete farmer program loan application.

Exhibit B replaces Guide Letter 1910–A–1 and includes a notice for disadvantaged individuals.

Part 1924—Construction and Repair

Subpart A—Planning and Performing Construction and Other Development

Section 1924.1—Softwood Timber (ST) loans is added as it was inadvertently left out of the regulation when the Softwood Timber regulations were issued and the reference to Recreation (RL) loans is removed.

Subpart B—Management Advice to Individuals, Borrowers and Applicants

Section 1924.51 has been revised to delete reference to the "New Full-Time Family Farmer and Rancher Development Committee" and Exhibit A of this subpart and delete the paragraph designation in the reference to Subpart A of Part 1965 of this chapter.

Section 1924.57(b)(1)(iv) has been revised to delete reference to Form FmHA 1924–26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," and substitute reference to Attachment 2, "Acknowledgment of Notice of Loan Service Programs, " of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1924.57(c)(5) has been revised to require that a feasible plan is necessary when a loan or servicing action is approved, and to expand the definition of a feasible plan. This should provide for more uniformity and clarify the requirements for a feasible plan.

Section 1924.57(c)(6) has been revised to require that borrowers be contacted 60 to 75 days prior to expiration of Form FmHA 1962–1 by means of Exhibit A and Attachment 1 of Subpart B of Part

1924 of this chapter, and to require that a new farm and home plan, or other acceptable plan, be developed for the upcoming year prior to the expiration of Form FmHA 1962–1. This provides the borrower and County Supervisor more flexibility in when to fill out these forms.

Section 1924.57(c)(7) has been added to require the plan meet the requirements applicable for highly erodible land and wetlands in Exhibit M of Subpart G of Part 1940 of this chapter.

Section 1924.57(d)(1) has been split into two paragraphs numbered (d)(1) and (d)(2). New paragraph (d)(1) has been revised to establish guidelines for use of production history and disaster declaration histories to develop cash flow projections. New paragraph (d)(2) has been revised to correct a reference to FmHA Instruction 1945–D, to correct the name of the National Agricultural Statistics Service (NASS), and to require the State supplement containing the commodity price list to include a 5-year history of disaster declarations. Current paragraph (2) has been renumbered to (3).

Section 1924.58 has been revised to change annual cashflow to cash receipts and expenditures and require borrowers to maintain and provide to FmHA adequate records to receive further assistance from FmHA. This will provide for a sound basis for developing future plans for determining progress and the strength and weakness of the operation.

Section 1924.59(d) has been deleted.

Section 1924.59(e) has been renumbered to (d) and revised to delete references to Form FmHA 1924–25, "Notice of Intent to Take Adverse Action"; refer to Exhibit A of Subpart S of Part 1951 of this chapter; and include borrowers whose loans have been written down.

Section 1924.60(d)(1) has been revised to apply to all borrowers who are at least 180 days delinquent.

Section 1924.60(d)(8) has been added to include borrowers who have conservation easements and/or had their loans written down.

Section 1924.71 has been revised to refer servicing of delinquent borrowers to Subpart S of Part 1951 of this chapter.

Section 1924.72 has been removed and reserved.

Section 1924.73(a) has been revised to delete the reference to Form FmHA 1924–26 and to require that an analysis be conducted with those borrowers listed in § 1924.60(d).

Current Exhibit A, "New Full-Time Family Farmer and Rancher Development Committee," has been removed. The New Full-Time Family Farmer and Rancher Development Committee program has had no participation for the last few years. It never was a very successful program. It appears that there are other organizations and agencies that are available that offer similar assistance that apparently are more acceptable to borrowers. Therefore, we are discontinuing the program. A new Exhibit A has been added as a letter to the borrower regarding the need to complete a new Form FmHA 1962–1 in order to continue to receive releases of farm income for family living and farm operating expenses. Attachment 1 to Exhibit A further explains this process.

Part 1941—Operating Loans

Subpart A—Operating Loan Policies, Procedures, and Authorizations

Sections 1941.1, 1941.2 and 1941.23(a)(2) have been revised to incorporate uniform language regarding FmHA's equal opportunity policy and to clarify the objectives of the operating (OL) loan program.

Section 1941.3 has been revised to remove the reference to the "New Full-Time Family Farmer and Rancher Development Committee."

Section 1941.4 has been revised to apply only to this subpart, to remove the paragraph designations and define the following: a borrower, a feasible plan, a joint operation, and redefine a non-farm enterprise.

The introductory paragraph to § 1941.6 has been revised to require the County Supervisor to consider if other credit is available, with or without a guarantee or subordination.

Section 1941.6(d) has been revised to require that an applicant must apply for a guaranteed loan if a lender indicates interest or the County Supervisor determines the applicant may be able to obtain one. Current paragraph (d) has been renumbered to (f) and revised to refer to sound financial management. This is part of the test for credit elsewhere.

Section 1941.6(e) has been added to require that the assets of the members of an entity must be considered when testing for credit elsewhere.

Section 1941.10 has been removed and reserved.

Section 1941.11(b) has been removed.

Sections 1941.12(a)(1), 1941.12(a)(8), and 1941.18(a)(1) have been partially revised to delete the paragraph designations in references to § 1941.4.

Section 1941.12 (a)(3) and (b)(4)(ii) have been revised to require recent farm experience or training (1 year out of the last 5 years) as an eligibility requirement. This is necessary due to the rapid changes in agriculture.

Section 1941.12(a)(4) has been removed.

Section 1941.12(a)(5) has been renumbered to (4) and revised to clarify the character eligibility requirement. Subsequent paragraphs (6) through (8) have been renumbered to (5) through (7).

Section 1941.12(b)(3) has been revised to require an entity applicant be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

Section 1941.12(b)(4) has been revised to allow loans to members of entities as well as the entity itself but not to other entities.

Section 1941.12(b)(4)(i) has been renumbered to (b)(5) and revised to delete the paragraph designation in reference to § 1941.4.

Sections 1941.12(b)(5)(ii) has been revised to require that members of an entity applicant must have recent farm management and operating experience (1 year out of the last 5 years).

Section 1941.12(b)(5)(iii) has been revised to clarify the character eligibility requirement.

Section 1941.16(a) has been revised to change "birds" to "poultry" and delete "worms."

Section 1941.17 has been revised to clarify the purposes and/or situations for which an OL loan will not be approved and to reduce the total youth loan outstanding principal balance from $10,000 to $5,000. An analysis of FmHA data indicates that the size of youth loans is declining. It also suggests that larger loans have a higher frequency of delinquency. Over 78 percent of the youth loans are for less than $5,000. This data indicates that the $5,000 limit will provide loans for most of the youth projects.

Section 1941.18(b)(4) has been revised to clarify the use of balloon payments.

Section 1941.18(c) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Section 1941.19(a) (3), (4) and (6) have been removed. Paragraphs (5) and (7) have been renumbered to (4) and (5), respectively.

Section 1941.19(a)(2) has been revised to clarify security requirements when a borrower has two or more insured and/or guaranteed loans. Current paragraph (a)(2) has been renumbered to (a)(3).

Section 1941.19(e) has been revised to add special security requirements for loans made to entities whose members are currently indebted to FmHA as individuals and vice versa.

Section 1941.19(e) has been renumbered to (f) and paragraph (f)(1) has been revised to correct the title of Form FmHA 441–8. Current paragraphs

(f) and (g) have been renumbered to (g) and (h).

Section 1941.19(h) has been renumbered to (i) and paragraph (i)(1) has been revised to correct the reference to Form FmHA 1905–1.

Section 1941.29(b) has been revised to state that an insured OL loan *may* be made to a borrower with an outstanding guaranteed OL loan under certain conditions.

Section 1941.29(c) has been revised to state that an insured OL loan may be made to refinance a guaranteed OL loan under certain conditions.

Section 1941.33(b)(1)(iv) has been revised to require a feasible plan as a loan approval condition.

Section 1941.33(b)(2)(vii) has been added to require a signed copy of Form FmHA 1940–1 be sent to the borrower on the date of loan approval.

Section 1941.33(c) has been removed. Paragraph (d) has been renumbered to (c).

Section 1941.35(b) has been revised to state that checks to be cancelled will not be returned to the Finance Office, but will be processed with Form FmHA 1940.10.

Subpart B—Closing Loans Secured by Chattels

Sections 1941.54(b) and 1941.57(a)(1) have been revised to clarify signature requirements for individual and entity borrowers.

Section 1941.88(a) has been revised to require County Supervisors to encourage applicants to obtain crop insurance, if available, for OL loans secured by crops.

Section 1941.88(b) has been revised to state that borrowers will be encouraged to carry insurance on chattels.

Current § 1941.88(b) has been renumbered to (c) and revised for clarity.

Current § 1941.88(c) has been renumbered to (d).

Section 1941.96(b) has been revised to require that changes be made to Form FmHA 1962–1 when changes are made in the use of OL loan funds and the repayment schedule for the loan is changed. This is for clarification.

Part 1943—Farm Ownership, Soil and Water and Recreation

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

Sections 1943.1 and 1943.2 have been revised to incorporate uniform language concerning FmHA's equal opportunity policy and to clarify objectives.

Section 1943.3 has been revised to remove the reference to the "New Full-Time Family Farmer and Rancher Development Committee."

Section 1943.4 has been revised to apply only to this subpart; to remove the paragraph designations; and define a borrower, a farm, a feasible plan, a joint operation, a nonfarm enterprise and a socially disadvantaged applicant.

The introductory paragraph to § 1943.6 has been revised to require that guaranteed loan rates and terms be considered in the test for credit elsewhere.

Section 1943.6(d) has been revised to require that the test for credit elsewhere include applying for a guaranteed loan. Current paragraph (d) has been renumbered to (e).

Section 1943.7 has been added to provide guidance for the State of Hawaii for FO loans made on leasehold interests on real property.

Section 1943.10 has been revised to provide guidance on when to give preference to certain applications, and to provide for the use of Exhibit B of this subpart to establish target participation rates for socially disadvantaged applicants.

Section 1943.11 has been revised to add the words "for FO loans." Paragraph (b) has been deleted.

The introductory paragraph to § 1943.12 has been revised to delete the sentence regarding appeals.

Section 1943.12 (a)(1) and (b)(4)(i) have been revised to correct a reference to § 1943.4.

Section 1943.12 (a)(3) and (b)(4)(ii) have been revised to specify requirements for farm experience.

Section 1943.12(a)(4) has been deleted.

Section 1943.12(a)(5) (renumbered to (a)(4)) and § 1943.12(b)(4)(iii) have been revised to redefine character. Paragraphs (a)(6), (a)(7) and (a)(8) have been renumbered to (a)(5), (a)(6) and (a)(7), respectively.

Section 1943.12(b)(3) has been revised to require that entities operate not larger than a family farm after the loan is closed, and the members of the entity must be individuals and not other entities.

Section 1943.13 has been added to establish procedures and responsibilities for carrying out the FO Outreach Program for Socially Disadvantaged Individuals.

Section 1943.17 has been reformatted and revised to clarify the $200,000 outstanding principal loan balance for FO, SW and RL loans combined.

Section 1943.17(c) has been renumbered to (a)(3) and revised to delete the word "not."

Section 1943.17(d) has been deleted.

Section 1943.17(e) has been renumbered to (b).

Section 1943.18(b) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Section 1943.19(b)(1)(i)(D) has been added to clarify taking liens on homestead property.

Section 1943.19(g) has been added to establish special security requirements for loans to individuals who are members of entities indebted to FmHA, and vice versa.

Section 1943.19(h) has been added to clarify securing more than one loan with the same collateral.

Section 1943.25(c)(1) has been revised by deleting the last sentence and subparagraphs (i), (ii), and (iii), and redesignating them as (c)(2), (c)(2)(i), (c)(2)(ii) and (c)(2)(iii). Paragraphs (2) through (4) have been renumbered to (3) through (5).

Section 1943.29(b) has been revised to allow an insured FO loan to be made to a borrower who has an outstanding guaranteed FO, SW, or RL loan under certain conditions.

Section 1943.32(a) has been revised to add Form FmHA 443–8, "Agreement (Between Seller, Purchaser, and Tenant)."

Section 1943.33(b)(1)(iv) has been revised to require a feasible plan as a loan approval condition.

Section 1943.33(c) has been deleted. Current paragraph (d) has been renumbered to (c).

Section 1943.35(c)(1) has been revised to require when a check is to be cancelled, it will not be returned to the Finance Office, but will be processed with Form FmHA 1940–10.

Section 1943.38(g)(4) has been revised to clarify the signature requirements for loans made to individuals and to entities.

Exhibit B has been added to implement target participation rates for FmHA loans to socially disadvantaged applicants.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

Section 1943.51 has been revised to clarify FmHA's ECOA statement.

Section 1943.52 has been revised to clarify the objectives of the SW loan program.

Section 1943.53 has been revised to delete the reference to "New Full-Time Family Farmers and Rancher Development Committee" (see discussion under Subpart B of Part 1924 above).

Section 1943.54 has been revised to remove the paragraph designations, and to define borrower, farm, joint operation and feasible plan.

The introductory paragraph to § 1943.56 has been revised to require consideration of a guarantee and subordination in the test for credit elsewhere.

Section 1943.56(d) has been revised to require an applicant to apply for an FmHA guaranteed loan if a lender indicates it is willing to make one or the County Supervisor determines the applicant could obtain one. Current paragraph (d) has been renumbered to (e).

Section 1943.60 has been removed and reserved.

Section 1943.61 has been revised by deleting paragraph (b) and removing the designation (a) from the remaining paragraph.

Section 1943.62 (a)(1) and (b)(3) have been revised to change the reference to § 1943.54.

Section 1943.62(a)(3) has been revised to clarify the definition of character.

Section 1943.62(b)(1) has been revised to clarify the definition of character and require that it apply to all members of entity applicants.

Section 1943.62(b)(2) has been revised to require that all members of the applicant entity must honestly try to carry out the conditions and terms of the loan.

Section 1943.62(b)(9) has been revised to require that members of entities be individuals and not other entities.

Section 1943.67(a) has been deleted and paragraphs (b) through (d) have been renumbered to (a) through (c).

Section 1943.68(b) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Section 1943.69(b)(1)(i)(D) has been added to clarify taking a lien on homestead property.

Section 1943.69(g) has been added to provide special security requirements for loans made to entities whose member(s) are indebted as individuals, and vice versa.

Section 1943.69(h) has been added to allow more than one loan to be secured by the same collateral under certain circumstances.

Section 1943.75 has been revised by removing the last sentence of paragraph (c)(1) and rearranging the paragraph.

Section 1943.79(c) has been revised to allow an insured SW loan to be made to a borrower with an outstanding guaranteed FO, SW, or RL loan under certain conditions.

Section 1943.83(a)(1) has been revised to delete the paragraph designation in the reference to § 1943.67.

Section 1943.83(b) has been revised to require a feasible plan as a condition of loan approval.

Section 1943.83(c) has been deleted. Current paragraph (d) has been renumbered to (c).

Section 1943.88(g)(4) has been revised to clarify signature requirements for individuals and entities.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

Sections 1943.101 through 1943.150 have been removed and reserved because the program has not been funded since FY 1981 and there are no plans to fund it in the future. Removing the regulation will reduce the Government's cost of revising and maintaining the regulations.

Part 1944—Housing

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

Section 1944.23 has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Part 1945—Emergency

Subpart C—Economic Emergency Loans

Sections 1945.119(a) and 1945.149(b) have been revised to change a reference from Subpart A to Subpart S of Part 1951 of this chapter.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Section 1945.154(a)(4) has been revised to redefine borrower.

Section 1945.168(c) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Section 1945.169(a)(3) has been revised to allow insured and guaranteed loans to a borrower when security is separate and identifiable. Different lien positions on real estate are considered separate collateral.

Part 1951—Servicing and Collections

Subpart A—Account Servicing Policies

Section 1951.7(d)(1) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Section 1951.7(f) has been deleted. Paragraph (g) has been renumbered to (f). This is no longer needed. The information will be obtained through field office terminals. Paragraph (h) has been renumbered to (g).

Section 1951.8(a) has been revised to change "Finance Office" to "lock box facility(s)."

The introductory paragraph of §§ 1951.9 and 1951.10 have been revised to provide that the rules on distribution of payments apply only after the County Supervisor decides how much of the proceeds will be released for other purposes. This is to make sure proceeds are released for family living and farm operating expenses before making payments to FmHA.

Section 1951.25(b)(5) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Sections 1951.33 through 1951.49 have been removed and reserved. These paragraphs have been transferred to Subpart S of this part.

Exhibit titles of Subpart A of Part 1951 of this chapter have been removed and reserved.

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

Section 1951.3149a)(8) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs

Section 1951.558 (c)(1)(ii) and (c)(1)(iii) have been revised to remove Forms FmHA 1924–25 and FmHA 1924–26 and replace with Exhibit A and Attachments 1 and 2 of Subpart S of this part.

Subpart S—Farmer Program Account Servicing Policies

Sections 1951.901 through 1951.950 with Exhibits A through J have been added. This regulation is discussed above.

Part 1955—Property Management

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Section 1955.1 has been revised to correct a reference.

Section 1955.3(c) has been revised to define dwelling retention. Current paragraphs (c) through (k) have been renumbered to (d) through (l).

The introductory paragraph to § 1955.10 has been revised to set forth specific guidelines for voluntary conveyances involving farmer program borrowers, and to delete references to Forms FmHA 1924–25 and 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.10(c)(1)(ii) has been revised to provide that payment of installments on prior liens is discretionary in accordance with FmHA Instruction 1955–B, § 1955.67.

Section 1955.10(d)(8) has been revised to delete Forms FmHA 1924–25 and FmHA 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.15(d)(2)(iv) (A) and (B) have been revised to delete Form FmHA

1924–25 and substitute Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.15(d)(2)(iv) has been revised to clarify the handling of SFH loans when the borrower has both Farmer Program and SFH loans.

Section 1955.15(d)(3) has been revised to provide guidance in handling offers made by a borrower after acceleration of the account.

Section 1955.15(d)(4) has been revised to change "Inquiry Station of the Finance Office" to "field office terminal system."

Section 1955.15(d)(5) has been revised to delete Forms FmHA 1924–14, FmHA 1924–25 and FmHA 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

An introductory paragraph has been added to § 1955.18 to state that local attorneys may be employed on a case-by-case basis to aid in the title clearance on foreclosed inventory property.

Section 1955.18(h) has been revised to require the County Supervisor to notify the borrower-owner of dwelling retention rights by sending Attachment 1 of Exhibit I of Subpart S of Part 1951 of this chapter to the borrower-owner.

Section 1955.18(i) has been added to specify how the County Supervisor will notify previous owners and operators of leaseback/buyback rights.

Section 1955.18(j) has been added to specify how the County Supervisor will notify the borrower-owners, immediate previous owners, and immediate previous operators when inventory CONACT property becomes available for sale.

Subpart B—Management of Property

Section 1955.53 has been revised to remove the paragraph designations, and to add or revise the definitions of Indian reservation, socially disadvantaged individual and suitable property.

Section 1955.55(a) has been revised to delete reference to Forms FmHA 1924–14, FmHA 1924–25 and FmHA 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.55(d) has been revised to change the reference from Subpart D of Part 1955 to FmHA Instruction 2024–A (available in any FmHA office) and delete Form FmHA 120–10.

The introductory paragraph to § 1955.63 and § 1955.63(a) have been revised to require the County Committee to classify farm property as suitable unless the property is larger than a family-size farm.

Section 1955.63(b) has been revised to establish specific guidelines for subdividing large farm properties.

Section 1955.63(c) has been partially revised to correct a reference to FmHA Instruction 2024–A and to delete the reference to MFH.

Section 1955.63(d) has been revised to require the County Committee to determine suitability of farm property and to remove this authority from the County Supervisor, District Director, and State Director.

Section 1955.64 (a) and (a)(3) have been revised to provide for repairs to nonessential farm buildings or facilities if they are historic or if a health or safety problem exists, and to clarify what the County Supervisor's responsibilities are and what FmHA will request of the Soil Conservation Service when dealing with highly erodible soil on farm property.

Sections 1955.64(c) and 1955.65 (c) and (c)(3) have been revised to change the reference from FmHA Instruction 1955–D to FmHA Instruction 2024–A.

Section 1955.65(c)(4) has been revised to delete references to Forms FmHA 120–1 and 2024–1, and refer instead to FmHA Instruction 2024–A.

Section 1955.66(a)(2)(iii) has been revised to clarify the requirement of consideration for dwelling retention to prior borrower-owners only; allow the County Supervisor to lease farm property when a feasible plan of operation can be developed; and to delete the reference of restricting leasing of property which could be used to produce surplus crops; and refer to Exhibits I and J of Subparts S of Part 1951 of this chapter for dwelling retention and leaseback/buyback. Paragraph (a)(2)(iii)(A) has been split into paragraphs (A) through (F).

Section 1955.66(a)(2)(iii)(B) has been renumbered to (G).

Section 1955.66(c)(1) has been revised to require the County Supervisor to determine that a prospective lessee possesses the management skills necessary to fulfill the terms of the lease.

Section 1955.66(c)(2) has been revised to establish guidance for racial and ethnic consideration in leasing inventory property.

Section 1955.66(c)(3) has been revised to clarify leasing priority for FmHA inventory property.

Section 1955.66(d) has been revised to establish procedures for leaseback/buyback of property within an Indian reservation which secured a Farmer Program loan when the former borrower-owner was the Indian tribe having jurisdiction over the reservation or a member of such tribe.

Current § 1955.66(d) has been renumbered to (e) and (e)(3) and has been revised to allow rents below market rent if the Administrator concurs. Paragraph (e)(4) has been deleted. Paragraphs (e) and (f) have been renumbered to (f) and (g).

Section 1955.66(g) has been renumbered to (h) and revised to state that the purchase price for farm property will be the market value and that Indian tribes or tribal corporations that use the Indian Land Acquisition Program may purchase the property for its market value minus the contributory value of the buildings.

Section 1955.66(h) has been revised to change the title of the paragraph and to include the spouse or child of a previous borrower-owner, member, stockholder, partner or joint operator, Indian member of a tribe, Indian corporation, entity or Indian tribe. Current paragraphs (i) through (m) have been renumbered to (j) through (n).

Section 1955.66(o) has been added to state that, except for property covered by paragraph (d) of this section, property may be leased or sold after dwelling retention and/or leaseback/buyback rights have expired.

Section 1955.67(a) has been revised to make the payment of prior lien installments discretionary by the servicing official and to provide that the State Director may discontinue payment of installments on prior liens when it is in the best interest of the Government.

Section 1955.73 regarding dwelling retention has been removed and reserved. Dwelling retention is now covered in Exhibit I of Subpart S of Part 1951 of this chapter.

Exhibit B has been added as a format to notify Indian tribes of the availability of farm property for lease or purchase within the boundaries of its reservation.

Subpart C—Disposal of Inventory Property

Section 1955.103 has been revised to define dwelling retention, farmer program loans, leaseback/buyback, owner, previous operator and socially disadvantaged individual, and to redefine suitable property.

Section 1955.105(a) has been revised to refer to Exhibits I and J of Subpart S of Part 1951 of this chapter regarding dwelling retention and leaseback/buyback.

Section 1955.109(a) has been renumbered to § 1955.105(c).

Section 1955.109(b) has been renumbered to § 1955.105(b) and revised to update a reference to § 1955.137 of this subpart.

Section 1955.106 has been revised to "Disposition of farm property." Paragraph (a) provides rights of the previous owner and notification instructions. Paragraph (b) provides for racial and ethnic considerations. Paragraph (c) provides for non-program (NP) borrowers.

Former § 1955.106 has been renumbered to § 1955.107. Paragraph (a) has been revised to permit State Offices to maximize advertisement of inventory property by notifying nearby FmHA county and district offices. Also, Tribal Councils are now responsible for notifying the parties listed in § 1955.66 of Subpart B of this part. Paragraph (c) has been revised to require that the price of all inventory property will be its market value. Paragraph (e) has been renumbered to (d). Paragraph (d) has been renumbered to (e) and subparagraph (e)(1) has been revised to apply only to nonfarm property. Subparagraph (e)(2) has been revised to delete the capitalization value of farm property and to clarify preference criteria when two or more eligible applicants wish to purchase a farm property.

Section 1955.107 has been renumbered to § 1955.108. The introductory paragraph has been revised to refer to Exhibits I and J of Subpart S of Part 1951 of this chapter concerning dwelling retention and leaseback/buyback. Also, property classified as suitable will remain so for 3 years; after 3 years, it may be reclassified and sold as surplus. However, if a potential purchaser is eligible for FmHA assistance, the property may be reclassified as suitable by the County Committee and sold on eligible terms. Paragraph (a) has been revised to refer to Exhibits I and J of Subpart S of Part 1951 of this chapter concerning dwelling retention and leaseback/buyback. Paragraph (b) has been revised to delete the capitalization value of farm property and to clarify preference criteria when two or more eligible applicants wish to purchase a farm property. Paragraph (c) has been revised to refer to all surplus or suitable property which has been inventory for 3 years.

Section 1955.108 has been renumbered to § 1955.109. Paragraph (b) has been revised to clarify authority to approve credit sales. Current paragraphs (b) through (h) have been renumbered to (c) through (i).

Section 1955.111(b) has been revised to change the reference from FmHA Instruction 1955–D to FmHA Instruction 2024–A.

Section 1955.123(a) has been revised to provide guidance on who is authorized to approve or disapprove credit sales of chattels.

Section 1955.137(a)(3) (iv) and (v) and (c)(5) have been revised to correct references to paragraph (b) of this section.

Section 1955.139 has been revised and paragraph (c) has been added to establish procedures for transfer of inventory property for conservation purposes to Federal or State Agencies. Paragraphs (a)(3), (a)(3)(i)(A), (a)(3)(i)(B) and (a)(3)(iii) have been revised to include Federal Government units, and paragraph (a)(3)(i)(B) has also been revised to reference Executive Orders 11988 and 11990.

Due to the volume of changes proposed in the Farmer Program related areas of Subparts B and C of Part 1955, and to assist the public in reviewing these changes in the context of the existing regulations, FmHA is publishing Subparts B and C of Part 1955 in their entirety. FmHA published a proposed rule on April 2, 1987 (52 FR 10577), which affected Subpart C of Part 1955 as it related to FmHA's Housing programs. In the near future FmHA intends to publish a final rule based on the April 2, 1987, notice of proposed rulemaking.

The following sections of Subpart B of Part 1955 involve FmHA's single family housing program and are not subject to comment in this rulemaking. These paragraphs will either be changed in FmHA's forthcoming final rule implementing its proposed revision to Subpart C of Part 1955 or these sections will be proposed in a separate rulemaking proceeding.

1955.54	1955.66(a)(2)(i)
1955.55(b)(2)(iii)	1955.66(a)(2)(ii)
1955.55(d)	1955.66(b)
1955.57 (currently reserved)	1955.66(e)(2)
1955.63(c)	1955.66(f)
1955.64	1955.68(a)
1955.65(c)(4)	1955.68(c)
	1955.72

The following sections of Subpart C of Part 1955 involve FmHA's single family housing program and are not subject to comment in this rulemaking. These sections will be revised in FmHA's forthcoming final rule implementing its proposed revision to Subpart C of Part 1955. This forthcoming rulemaking will make changes to other sections of Subpart C of Part 1955. However, comments on all parts of Subpart C of Part 1955 other than those sections specifically listed below will be considered.

1955.110	1955.115
1955.111	1955.116
1955.112	1955.117
1955.113	1955.118
1955.114	1955.119

Part 1962—Personal Property

Subpart A—Servicing and Liquidation of Chattel Property

Section 1962.4 has been revised to apply only to this subpart; to remove the paragraph designation; and to redefine borrower.

Section 1962.6(c)(1)(iv) has been revised to show that voluntary assignments will be taken on the amount anticipated from the ASCS deficiency payment program(s), as indicated on Form FmHA 1962–1 for payments due on FmHA loans.

Section 1962.6(c)(2)(ii) has been revised to require the use of Form ASCS–36, "Assignment of Payment," instead of Form FmHA 1962–8; which will be obtained from the ASCS County Office.

Section 1962.6(c)(3)(ii) has been revised to show that the checks obtained from ASCS as a result of an assignment(s) will be made payable to FmHA only, and the proceeds used as indicated on Form FmHA 1962–1.

The introductory paragraph to § 1962.8 has been revised to apply only when the borrower is delinquent.

The introductory paragraph to § 1962.13 has been partially revised to require the County Supervisor to use borrower's Form FmHA 1962–1 to prepare the list of potential purchasers and to prohibit the distribution of copies of Form FmHA 1962–1.

Section 1962.17(a)(2) has been revised for clarity and to make a cross-reference to paragraph (b) of this section regarding approval or disapproval of requests for release of sales proceeds; to remove the reference to Form FmHA 1924–14; and to refer to Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1962.17(b)(2) has been revised for clarity, to identify essential farm operating and family living expenses and to eliminate reference to Form FmHA 1924–25.

Section 1962.17(b)(5) has been revised to change a reference from § 1924.57(d)(2) to § 1924.57(d).

Section 1962.29 has been revised to include crop insurance premiums.

Section 1962.30 has been revised by redesignating paragraphs (b)(1) through (b)(7) as (b)(2) through (b)(8). A new paragraph (b)(1) has been added to permit subordinations for annual production loans to delinquent borrowers under certain conditions.

Section 1962.34(a)(2) has been revised to require the use of Form FmHA 460–9 when debts are assumed at the same rates and terms of the existing notes or assumption agreements.

Sections 1962.40(b); 1962.40(e); 1962.41; 1962.42(a); 1962.42(d); 1962.47(a)(3); and 1962.49(c) (1) and (2) have been revised to delete references to Forms FmHA 1924–14, 1924–25, and 1924–26 and to substitute references to Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

Section 1962.40(b) has also been revised to correct the reference to § 1962.2.

Section 1962.40(b)(3) has been reformatted and revised to delete references to Forms FmHA 1924–25 and FmHA 1924–26 and to substitute references to Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter and provide for the use of Attachments 9 and 10 of Subpart S of Part 1951 of this chapter requesting and explaining other options.

Section 1962.41(e) has been revised to authorize release of liability when a borrower liquidates chattel security and the sale results in less than full payment of the FmHA debt.

Section 1962.41(f) has been added to provide guidance on how to process a release of personal liability for a borrower(s) or any cosigner(s) when all security has been properly disposed of and the proceeds applied on the borrower(s) FmHA debt.

Section 1962.42(c)(5) (i), (ii) and (c)(6)(ii)(A) has been revised to change Form FmHA 455–8 to 1955–41.

Exhibit B has been revised to correct the names of the Agency.

Part 1965—Real Property

Subpart A—Servicing of Real Property for Farmer Program Loans and Certain Note-Only Cases

The introductory paragraph to § 1965.7 has been added to state that the definitions only apply to this subpart.

Section 1965.7(a) has been revised to define borrower. Current paragraphs (a) through (k) have been renumbered to (b) through (l).

Sections 1965.11(c)(2)(ii); 1965.11(c)(3); 1965.26(b); 1965.26(c)(1); and Exhibits B and C have been revised to delete references to Forms FmHA 1924–14, 1924–25 and 1924–26 and substitute references to the applicable attachments of Exbibit A of Subpart S of Part 1951 of this chapter.

Section 1965.11(c)(2)(i)(C) has been revised to clarify the provision for protective advances for payment of prior lienholders.

Section 1965.11(c)(2)(ii)(A) has been partially revised for clarity and paragraph (B) has been revised to specify how proceeds will be handled when no bid will be made if FmHA decides not to pay off a prior lien; and how unsatisfied borrower's accounts will be handled.

Section 1965.12(a)(8) has been revised to clarify that the amount of a prior lien(s) obtained by subordination, plus the FmHA debt, will not exceed the present market value of the real estate security.

Section 1965.12(b)(2)(ii)(B) has been revised to permit State Directors to subordinate farm tracts that secure only a loan(s) no longer authorized.

Section 1965.12(g) and the introductory paragraph to § 1965.13 have been revised to change the reference from Subpart A to Subpart S of Part 1951 of this chapter.

Section 1965.13(f)(4)(ii)(B) has been revised to clarify that proceeds from the sale of real estate security will not be released for family living and/or operating expenses. The Agricultural Credit Act of 1987 only requires the release of proceeds from normal income for family living and/or operating expenses.

Section 1965.17(a) has been revised to clarify that FmHA needs to take action to approve a lease only if the lease is for more than three years and/or contains an option to purchase.

Section 1965.25(a) has been revised to clarify the meaning of "additional security."

Section 1965.25(d) has been revised to show that a valueless junior lien on a borrower's dwelling financed with a SFH loan can be released if the dwelling is located on a nonfarm tract which serves as additional security for a farmer program loan(s).

Section 1965.26(a)(2) has been revised to allow State Directors to obtain an appraisal from a qualified appraiser outside FmHA when a sale or transfer of real estate security is for less than the debt against it.

Section 1965.26(b)(1) has been revised to require the County Supervisor to send the borrower Exhibit F of Subpart A of Part 1962 of this chapter.

Section 1965.26(b)(4) has been removed.

Section 1965.26(c)(1) has been revised for clarity and to make reference to paragraph (c)(2) of this section.

Section 1965.26(c)(2) has been revised for clarity and to set forth the conditions that must be met in order for FmHA to continue with the borrower on his/her SFH loan(s). An Equity Recapture Agreement will be executed by the borrower if the borrower cannot make a cash payment to cover the amount of equity in the SFH nonfarm tract which secures the borrower's FP loan(s) that have been accelerated.

Section 1965.26(d) has been revised to clarify when a borrower needs FmHA consent to stop operating real estate security; and allows State Directors to approve an accelerated repayment agreement when a borrower stops farming, in lieu of foreclosure, when it is in the best interest of the Government.

Section 1965.26(e) has been revised to include the failure to operate as eligible for an accelerated repayment agreement.

Section 1965.26(f) has been revised to apply only to a sale of *all* real estate security; to delete a reference to Form FmHA 1924–14; and to substitute reference to Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter.

The introductory paragraph in § 1965.27 has been revised to correct typographical errors; to delete a reference to Form FmHA 1924–14; to substitute a reference to Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter; and to delete the sentence regarding appeals.

Section 1965.27(b)(4)(iv) has been revised to include transferor's costs to be paid by the transferee. Subparagraph (v) is deleted and subparagraph (vi) is renumbered to (v).

Section 1965.27(b)(3) has been revised to change a reference from Subpart A to Subpart S of Part 1951 of this chapter.

Section 1965.27(b)(5) has been revised to reference the use of Form FmHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," when processing assumptions on same terms. Form FmHA 1965–13 will not be used for assumptions on the same terms.

Section 1965.27(b)(5)(i)(C) has been revised to correct a typographical error.

Section 1965.27(c)(1)(iii) has been revised to permit EE and other loans no longer authorized to be assumed on eligible FO loan terms by an immediate family member(s) of an active farm loan borrower or an eligible FO applicant if the property is a suitable farm tract.

Section 1965.27(g)(8) has been revised to change the wording joint borrower to read another liable.

Section 1965.27(g)(9) has been revised to reference Form FmHA 460–9 when the full amount of the debt is assumed or a release from personal liability is approved.

Section 1965.31(a)(2) has been revised to apply only when the borrower is delinquent.

List of Subjects

7 CFR Part 1809

Loan programs—Agriculture, Real property—Appraisals, Rural areas.

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and Community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Home improvement, Low and moderate housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt Restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1809—APPRAISALS

1. The authority citation for Part 1809 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Appraisal of Farms and Leasehold Interest

2. Section 1809.1 is amended by revising the introductory text to read as follows:

§ 1809.1 General.

This subpart prescribes the policies and procedures for appraisal of farms securing Farm Ownership (FO) loans, Operating (OL) loans, Soil and Water (SW) loans to individuals, Land Conservation and Development (LCD) loans, Labor Housing (LH), and Rural Housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their market value under this subpart.

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

3. The authority citation for Part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; Title II of the Emergency Agricultural Credit Adjustment Act of 1978, 92 Stat. 429; deleg. of auth. by Sec. of Agr., 7 CFR 2.23; deleg. of auth. by the Under Sec. for Small Community and Rural Development, 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

4. Section 1902.1 is amended by revising paragraphs (i), (j) and (k) to read as follows:

§ 1902.1 General.

* * * * *

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either: (A) The borrower, the United States of America acting through the FmHA, and the Financial Institution on Form FmHA 402-1, "Deposit Agreement," or (B) the borrower, FmHA, other lenders, and the Financial Institution on Form FmHA 402-5, "Deposit Agreement (Non-FmHA Funds)."

(j) Form FmHA 402-1 provides for the deposit of funds in a supervised bank account to assure the performance of the borrower's obligation to FmHA in connection with a loan and grant. This form will also be used in the situations described in § 1955.15(d)(3) of Subpart A of Part 1955 of this chapter.

(k) Form FmHA 402-5 will be completed when funds advanced by other lenders are deposited in a supervised bank account to assure the performance of the borrower's obligation.

* * * * *

5. Section 1902.2 is amended by revising paragraphs (a)(2), (a)(5), (b), (e) and the introductory text of paragraph (f) to read as follows:

§ 1902.2 Policies concerning disbursement of funds.

(a) * * *

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the State Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. When the construction process requires several checks to be issued at one time, the Loan Disbursement System (LDS) can still be utilized. Those District and County Offices authorized to request checks by telephone may request more than one check at a time. If more than one check is required, a Form FmHA 440-57 or Form FmHA 1944-57 will be prepared for each check.

* * * * *

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402-1 when the District Director or County Supervisor determines it is necessary to do so to assure that the funds will be available for replacement of the property.

* * * * *

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940-1 or Form FmHA 440-57 to the State Office. Subsequent checks will be ordered as needed by submitting Form FmHA 440-57 or Form FmHA 1944-57 to the State Office. All obligations, check requests and loan closing data for MFH loans must be accomplished through field office terminals. Requesting checks using Form FmHA 1944-57 is authorized only when

the system is expected to be down for an extended period.

* * * * *

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will process the check(s) with Form(s) FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," (or Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," for multiple family housing loans) in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402–5, provided:

* * * * *

6. Section 1902.3 is amended by revising paragraphs (a), (b) and (c)(1) to read as follows:

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the State Office by complying with the FMI for Forms FmHA 1940–1, FmHA 1944–51, FmHA 440–57 and FmHA 1944–57.

(b) Counties using the telephone to request subsequent advances will call the designated telephone number provided by the State Office and request all subsequent checks by providing the information required on Form FmHA 440–57.

(c) * * *

(1) "For Deposit Only to Account No. (Number of Construction Account) of (*Name of Borrower*) in (*Name of Financial Institution*)."

* * * * *

7. Section 1902.14 is revised to read as follows:

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the amount of each check), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and, if necessary, original cancelled checks or either a microfilm copy or other reasonable facsimile of the cancelled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

(c) If the Financial Institution did not return the original cancelled check(s) to the Agency with the statements, and FmHA has a need for the original cancelled check(s), the Financial Institution, upon request by the Agency, will furnish to the Agency the requested original cancelled check(s), or a certified microfilmed copy or other reasonable certified facsimile of the cancelled check(s) and will provide this service to the Farmers Home Administration with no fees being assessed the Agency or the Depositor's account for the service.

8. Exhibit B to Subpart A is revised to read as follows:

Exhibit B of Subpart A—United States Department of Agriculture, Farmers Home Administration—Interest-Bearing Deposit Agreement

Because Certain funds of ——— referred to as the "Depositor," are now on deposit with the ———, referred to as the "Financial Institution," under a Deposit Agreement, dated ———, 19——, providing for supervision by the United States of America, acting through the Farmers Home Administration, referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interest in the funds covered by that Deposit Agreement, and

Because certain of these funds are not now required for immediate disbursement and it is the desire of the Depositor to place these funds in interest-bearing deposits with the Financial Institution:

Therefore, the Depositor and the Government authorize and direct the Financial Institution to place ———Dollars ($———) of the funds subject to that Deposit Agreement in interest-bearing deposits as follows:

$ ———
for a period of ———
months at ——— % interest ———

$ ———
for a period of ———
months at ——— % interest ———

$ ———
for a period of ———
months at ——— % interest ———

These interest-bearing deposits and the income earned on them at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion of the balance, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this ——— day of ———.

UNITED STATES OF AMERICA

By: ———

County Supervisor, Farmers Home Administration, U.S. Department of Agriculture

(Depositor)

By: ———
Title: ———

Accepted on the above terms and conditions this ——— day of ———, 19——

———

(Financial Institution)

———

(Office or Branch)

By: ———
Title: ———

Exhibits C and D [Removed and Reserved]

9. Exhibits C and D to Subpart A are removed and reserved.

PART 1910—GENERAL

10. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

11. Sections 1910.1 through 1910.11 are revised, §§ 1910.12 through 1910.50 are added and reserved, and Exhibits A and B are added to Subpart A. As revised, Subpart A reads as follows:

Subpart A—Receiving and Processing Applications

Sec.

Exhibit A—Letter for Information Needed for a Complete Farmer Program Application

Exhibit B—Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland

Subpart A—Receiving and Processing Applications

§ 1910.1 General.

This subpart prescribes the policies and procedures for receiving and processing Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Labor Housing (LH) and insured Section 502 and 504 Rural Housing (RH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA).

(a) The County Supervisor will provide information about FmHA services to all persons making inquiry about FmHA programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and other written statements.

(b) Wherever the term "applicant" appears in this subpart, it shall be construed to mean applicant and/or co-applicant, if any.

§ 1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

ECOA, as amended, prohibits discrimination in credit based on sex, marital status, race, color, religion, national origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. These shall hereafter be referred to in this subpart as "ECOA prohibited bases." It is the policy of the Farmers Home Administration that assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

§ 1910.3 Receiving applications.

Applications for FmHA assistance will ordinarily be filed in the County Office serving the area in which the farm, dwelling, business, or other facility for which financing is being requested is or will be located.

(a) All persons applying for FmHA assistance who are not indebted to FmHA must file a written application. Any person wishing to submit an application will be permitted to do so. No oral or written statement may be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA "prohibited bases." The filing of written applications will be encouraged even though funds may not be currently available, since complete applications will be considered in the order received, except when program regulations or Veteran status provides for preference. Applications will normally be handled as follows:

(1) Form FmHA 410–4, "Application for Rural Housing Assistance (Non Farm Tract)," will be used by applicants for RH loans on nonfarm tracts who depend primarily on off-farm income.

(2) Form FmHA 410–1, "Application for FmHA Services," will be used by all other applicants. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. For EM loans, it is also necessary for the applicant to complete Form FmHA 1945–22, "Certification of Disaster Losses."

(3) The Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630, requires that:

(i) Except as specified in paragraph (a)(3)(ii) of this section, within 3 days of the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the FmHA office will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information From Financial Institution," to those applicants.

(ii) For a rental housing or labor housing application filed by an individual or a partnership of five or fewer members, the FmHA office will comply with paragraph (a)(3)(i) of this section only if it is determined that financial information will be requested from any financial institution.

(4) All individual loan applicants will sign Form FmHA 410–9, "Statement Required by the Privacy Act." A signed copy will remain with the application. No application is complete without a signed Form FmHA 410–9 on file.

(5) Information regarding race, national origin, sex, and marital status is needed for monitoring purposes for all applications filed for assistance to finance residential real estate when the loan is to be secured by a lien on the property. In those cases, FmHA will request the applicant and/or co-applicant to furnish that information on the application on a voluntary basis. The application form will indicate that this information is provided on a voluntary basis.

(b) Requests by FmHA borrowers or previous borrowers for additional assistance from FmHA will be submitted as prescribed by each loan/grant program, and the following:

(1) All applicants must provide their taxpayer's identification number with their applications, except as noted in paragraph (i) of this section.

(2) RH applicants who have a current Form FmHA 431–3, "Household Financial Statement and Budget," or Form FmHA 410–4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410–4 (if other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA 410–4):

(i) Name.

(ii) Social Security Number.

(iii) Loan purpose.

(iv) Planned income for next 12 months.

(v) Date and signature of the application.

(3) Farmer program applicants who are presently indebted to FmHA will be required to complete Form FmHA 410–1.

(4) Applicants for EM loans with new losses from disaster, as authorized under EM regulations, must also complete Form FmHA 1945–22 in addition to the other required forms.

(c) County Office Assistants ordinarily will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA. An explanation of the types of assistance available should be given whenever it is not clear what type of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated, and signed, and will be given whatever assistance deemed necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination surname. Married persons may apply as individuals. In the case of a joint application for other than a farmer program loan, the persons requesting the assistance will designate who is listed as "applicant" and who is listed as "co-applicant." For farmer program loans, there will be only one applicant. If a husband and wife want to apply together for a farmer program

loan, they will be considered a joint operation type entity as set out in FmHA loanmaking regulations. The County Office Assistant or County Supervisor should explain to husbands and wives that they may apply for farmer program loans as individuals and that the joint operation will be considered the borrower if they apply together. When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

(d) Information will be obtained about household members or others, including cosigners, as required by program regulations needed to determine eligibility for the requested assistance. When a co-signer will be required, the applicant will be requested to identify their choice of co-signer. An applicant will also be required to provide information concerning a cosigner, spouse or former spouse, who will not be a cosigner, or who is not a member of the household, when the applicant is relying on the co-signer or alimony, child support, or separate maintenance from that spouse or former spouse as a basis for repayment, or receipt of such payments will be considered for eligibility. In such cases, information regarding the co-signer's, spouse's or former spouse's financial resources may be requested. Only information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. The spouse of an applicant will not be required to sign the note unless the spouse's signature on the note is required to create a security interest or the spouse is a co-applicant. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State supplement.

(f) If a spouse's signature would be necessary for FmHA to obtain the necessary security, information regarding an applicant's marital status will be obtained. Only the terms "married," "unmarried" and "separated" may be used to designate marital status. "Unmarried" includes single, divorced, or widowed persons.

(g) FmHA may not request information concerning birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. Assumptions or aggregate statistics relating to the likelihood or probability that any particular group of persons will bear or rear children will not be used to evaluate creditworthiness, or for any other purpose; nor will the assumption be made that, for that reason, an applicant will receive diminished or interrupted income in the future.

(h) If after discussing credit needs, it appears that the applicant may be able to obtain the necessary credit from some other source, the County Supervisor should provide information on the availability of such credit and provide the needed assistance in contacting that credit source. All applications, including those from applicants assisted in obtaining credit from other credit sources, will be listed and reported in accordance with FmHA Instructions 1905–A and 2006–J which are available in all FmHA offices.

(i) For all loans and grants, the applicant *must* furnish the applicant's taxpayer's identification number with the application, except as otherwise indicated in this paragraph. The taxpayer's identification number for individuals who are not business applicants is the Social Security Number (SSN). The taxpayer's identification number will be used as part of the borrower's case number, except as noted in paragraphs (i)(2) and (i)(4) of this section.

(1) For individuals who are not business applicants, the SSN preceded by the State and county code numbers will constitute the borrower's case number to be used on all FmHA forms.

(2) For Community and Business and Industry program, T/A Self-Help, and other business applicants, a temporarily assigned number will be used initially for applicant identification for the purpose of obligating funds. This number will be assigned by the State Director from the block of borrower identification numbers assigned to each State by the Finance Office. The temporary number, preceded by the State and county code numbers, and followed by the project number, will constitute the borrower's case number to be used on all FmHA forms. The temporary number must be replaced by the taxpayer's identification number prior to loan closing/issuance of loan note guarantee, by submitting Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," to the Finance Office. In replacing the temporary number, follow the format shown in Item 1 of the Form Manual Insert (FMI) for Form FmHA 1940–1, "Request for Obligation of Funds," to complete the borrower's case number.

(3) In the case of noncitizens who are permanent residents or on indefinite parole and who do not yet have a taxpayer's identification number, their applications will be filed; however, they will not be processed until the SSN is obtained. Disposition of applications not processed because of lack of the number will be as set forth in FmHA Instruction 2033–A, "Managemant of County Office Records," (available in any FmHA office).

(4) The borrower's case number for residents of the Pacific Islands will be taxpayer's identification number issued by the Pacific Islands Government.

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled "Settlement Costs" will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

(1) Form FmHA 440–58, "Estimate of Settlement Costs," will be completed by the County Supervisor and delivered to the applicant with the booklet.

(2) A record of the date and method of delivery of the booklet and Form FmHA 440–58 will be kept in the running record section of the applicant/borrower County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes and subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940–41, "Truth in Lending Disclosure Statement," completed using "good-faith" estimates, will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

(l) Fees for the total amount charged for individual credit reports as indicated in Exhibit A of Subpart B of Part 1910 of this chapter (available in any FmHA office) will be collected from the loan applicants before credit reports are ordered, except in the case of Section

504 loan applicants and Section 502 Rural Housing loan applicants whose requested loan will likely not exceed $7,500. It is the policy not to order credit reports for Rural Housing loans of $7,500, or less, but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in § 1910.53(g) of Subpart B of Part 1910 of this chapter.

§ 1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. If a farm is situated in more than one State, County or parish, the loan will be processed in the State, County or parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) *Completed RH applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except an application from a veteran will receive preference as outlined in § 1910.10 of this subpart. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

(1) County Office records.

(2) Form FmHA 410–4.

(3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter (Subpart C available in any FmHA office).

(4) Personal contacts.

(5) Visits of supervisory personnel to the applicant's residence or business.

(6) Form FmHA 410–8, "Applicant Reference Letter," to inform sources such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the Form FmHA 410–4.

(i) Form FmHA 410–8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual, a joint operation, or a partnership of 5 or fewer members. When not using Form FmHA 410–8, the notification will read as follows:

"I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Pub. L. 95–630 in seeking Financial information regarding———————————

(applicant)

———————————

Date

———————————

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910–5, "Request for Verification of Employment." This form may be used to verify employment and income.

(8) Form FmHA 1940–20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter.

(9) Information required by § 1910.3(a)(3) and (4).

(b) *Completed farmer program applications.* Completed applications are those for which all information necessary to determine loan approval has been received. All persons requesting an application will be provided Exhibit A of this subpart. They will be processed in the order received, except as outlined in § 1910.10 of this subpart. The filing date will be stamped on the front of Form FmHA 410–1. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. A completed farmer program application will consist of:

(1) Completed Form FmHA 410–1, "Application for FmHA Services."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to the farm training and/or experience of the applicant and the individual members of an entity applicant.

(4) Supporting evidence that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Any readily obtainable financial information for the past five years.

(6) Up to five years of production history.

(7) A brief narrative describing the proposed operation and indicating the proposed size of the operation.

(8) The requirement set forth in § 1910.3(a)(3)(i) of this subpart.

(9) Form FmHA 1945–22 (EM loans only).

(10) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(11) Credit reports as provided in Subpart B and C of Part 1910 of this chapter.

(12) Form FmHA 410–8 as set out in § 1910.4(a)(6) of this subpart.

(13) Form FmHA 1924–1, "Development Plan," if necessary.

(14) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(15) Applicable items required in Exhibit M of Subpart G of Part 1940 of this chapter including SCS Form CPA–26, "Highly Erodible Land and Wetland

Conservation Determination," Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification," and Form FmHA 1940–20, as required by Subpart G of Part 1940 of this chapter.

(16) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(17) Form FmHA 440–32, "Request for Statement of Debts and Collateral," when applicable.

(18) Form FmHA 1940–22, "Environmental Checklist for Categorial Exclusion," or Class I or Class II assessment, whichever is applicable.

(19) Form FmHA 1945–29, "ASCS Verification of Farm Acreage Production and Benefits," (EM only).

(20) The requirement set forth in § 1910.3(a)(4) of this subpart.

(21) Additional information may be obtained and verified by:

(i) County Office records.

(ii) Personal contacts.

(iii) Visits of supervisory personnel to the applicant's operation.

(c) *Incomplete farmer program applications.* Applicants who do not submit necessary information for complete applications for EM, FO, OL and SW loans will be sent a letter within 20 working days after receipt of their applications. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(d) *Notifying applicants/borrowers about Limited Resource loans and socially disadvantaged individuals about the acquistion of inventory farmland.* Immediately after a completed application for OL, FO, SW or EM assistance is received, and prior to County Committee action, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland," to the applicant telling the applicant about Limited Resource loans and advising socially disadvantaged individuals, as defined in Subpart A of Part 1943 of this chapter, of the Farm Ownership Outreach Program, regarding the possibility of and assistance available in obtaining direct FO loans and the acquisition of inventory farmland.

(e) *Determining eligibility.* The County Committee will be used to determine eligibility of completed RH applicants who are also applying for a farmer program loan, or who are already indebted for a farmer program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for a determination of eligibility. The County Committee will certify whether or not the applicant meets the eligibility requirements by use of Form FmHA 440–2, "County Committee Certification or Recommendation." The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions are reserved for the loan approval official.

(f) *County Committee actions.* All actions by the Committee regarding applicant eligibility will be taken in Committee meetings attended by at least two Committee members. If the County Committee is unable to reach a decision based on the information available, they may request the County Supervisor to obtain further information or may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(g) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a *completed* application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified, in writing, of the action taken, not later than 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights for any decision that is appealable under Subpart B of Part 1900 of this chapter. If a determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified, in writing, of the circumstances causing the delay, and the approximate time needed to make a decision. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

(h) *Recording action taken.* The County Committee minutes or the running case record (whichever is appropriate) will show what action was taken on each application. The specific reason(s) for unfavorable decisions of eligibility on applications will be shown on the Committee Certifications. In those cases not involving County Committee action, this information will be recorded in the running case record.

(i) *Active applications.* An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a notice within 30 days that further consideration is desired. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart. Applications for RH, RRH, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed. Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming, will remain active for 12 months from the date they were received. All applications which are approved but not funded, withdrawn or rejected will be retained in an inactive file for 25 months after the end of the fiscal year. If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

§ 1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) *Age of applicant.* When evaluating the application, the age of the applicant will not be used as a consideration of eligibility (provided the applicant has reached the legal age of majority in the State, or has had the disability of minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) *Credit history.* Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) *Creditworthiness.* When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history.

(1) Foreclosures, judgments, or delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The cirumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: Loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(5) Bankruptcies must never be used as an indication of unacceptable credit history. However, non-payment of a debt may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section.

(6) Applicants who have had previous FmHA debts settled pursuant to Subpart B of Part 1956 of this chapter and Part 1864 of this chapter (FmHA Instruction 456.1).

§ 1910.6 Notification of applicant.

The time frames established in § 1910.4(g) of this subpart must be met.

(a) *Favorable decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately, and will promptly process the loan in accordance with the applicable regulations. Care should be exercised to be sure that the applicant understands that a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supervisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. Proper notification as to action taken will be sent to the applicant.

(b) *Unfavorable decision.* (1) The County Supervisor will immediately notify the applicant in writing of the unfavorable decision whether made by the County Supervisor or the County Committee. A statement will be made giving specific reasons for the denial. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of unfavorable decisions:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income is derived from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(2) If the County Committee determines that the applicant is not eligible, Form FmHA 440–2 will be completed by giving the specific reasons for the rejection in the blank space immediately above the space for the signatures of the County Committee members. The form will be dated and the County Committee members will sign in the space provided.

(3) If a decision to deny an EM, OL, FO, or SW loan(s) is overturned or modified in the appeal process or by a court, the case will be returned to the local FmHA County Supervisor for further processing. The County Supervisor or the County Committee must take action within 15 days, as set out in § 1900.59(c) of Subpart B of Part 1900 of this chapter.

(c) *Available funds.* After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within the time frames established in the loan making regulations.

(d) *Lack of funds.* Applications received when funds are not available will be processed through approval subject to the availability of funds. Applicants who are ineligible will be so advised, in accordance with paragraph (b)(1) of this section. If no funds are available within 15 days of loan approval, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified immediately by letter. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in paragraph (b)(1) of this section. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant and, if there have been any significant changes that would affect eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration.

(1) When funds are not available for EM, OL, FO and SW loans within 15 days of loan approval, eligible applicants will be approved for the loan, and Form FmHA 1940–1, "Request for Obligation of Funds," will be executed by the appropriate loan approval official. The following approval condition will be included under section 41, "Comments and Requirements of Certifying Official," of Form FmHA 1940–1, upon execution of the form for all ensured and guaranteed farmer program loans:

This loan is approved subject to the availability of funds. If this loan/guarantee does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds and will have as much additional time as is needed to redetermine eligibility or have the County Committee determine eligibility.

(2) The loan approval official will ask an applicant for an EM, OL, FO, or SW loan for updated information if more than 90 days has passed since Form FmHA 1940–1 was signed. If there have been any significant changes which would affect eligibility, the County Supervisor will obtain the necessary current information to determine eligibility, or when appropriate, present

the application to the County Committee for reconsideration. If, after reconsideration, the application is rejected, an unfavorable decision has occurred, and proper notification will be sent as outlined in paragraph (b)(1) of this section.

(e) *Credit report.* If a loan is refused because of information provided by a credit report, the County Supervisor will also:

(1) State the reason as being information received in the credit report and cite the specific information given in the credit report that led to the rejection (e.g. delinquent obligations, tax lien, or judgments).

(2) Provide the name and address of the credit reporting company.

(3) Inform the applicant that a copy of the Credit Report may be obtained from FmHA if requested by the applicant, but that any dispute regarding the accuracy of the information in the credit report must be resolved between the Credit Reporting Company and the applicant.

(f) *Other credit references.* When denial is based on information obtained from a source other than a Credit Reporting Company, the applicant will be advised that denial is based on information from other than a Credit Reporting Company, and that upon written request, the nature of that information will be disclosed.

(g) *Completing title work for insured Farmer Program loans.* When an insured Farmer Program loan(s) is approved, the following statement will be included as an approval condition under Section 41 of Form FmHA 1940–1:

> If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

§ 1910.7 Counseling.

(a) *Budgets.* When it appears that an RH non-farm applicant has insufficient income, based on the abbreviated budget section of the application form, the County Supervisor should invite the applicant to return to the County Office to complete Form FmHA 431–3. There should be enough income to repay the requested loan, pay other debts, and pay planned household and other expenses. Joint completion of the budget by the applicant and County Supervisor should provide the opportunity for the applicant to fully explain how household income is managed.

(b) *Farm and Home Plan.* When information on the Farm and Home Plan indicates that the applicant has insufficient income to repay the requested loan, pay other debts and provide a reasonable standard of living, alternative plans of farm operation will be considered to attempt to overcome the problem.

(c) *Applicant/Supervisor understanding.* When discussing the reasons for the applicant's failure to qualify, the County Supervisor will:

(1) Be sympathetic.

(2) Try to help the applicant work out the problem.

(3) Give full explanation for the rejection and provide full opportunity for further discussion.

(4) Offer suitable alternatives when applicable.

§ 1910.8 Reaching an understanding.

A proper understanding will be obtained with all applications with respect to the basic loan making and servicing policies, their responsibilities, and the benefits that may be expected from FmHA assistance. The applicants should be given adequate time to make all necessary basic decisions. Proper understandings may be reached with applicants through:

(a) *Individual interviews with County Office personnel.* The process of arriving at an understanding will begin on the occasion of the first interview with the applicant. The applicant will be given an attentive and sympathetic hearing with ample time to discuss fully all problems and needs. County Office personnel will explain clearly whether and how these needs may be met through the services of FmHA. If necessary, arrangements will be made for subsequent discussions until the County Supervisor is satisfied the applicant has obtained a proper understanding.

(b) *Applicant interviews with the County Committee.* An applicant requesting an opportunity to appear before the County Committee to discuss any questions relating to the application or the FmHA program will be permitted to do so.

(c) *Group meetings.* An effective method of assisting applicants to obtain a proper understanding of the FmHA program is through group meetings. Effective group meetings can be held with three or more applicants. Through group meetings applicants get the benefit of explanations given to questions raised by others. Requirements can be presented more impersonally, and generally are more acceptable when applicants know that all borrowers must meet the same requirements. Group participants will be informed that matters of personal or confidential nature will not be discussed publicly, and that any such questions will be answered during individual interviews.

(d) *Items to be discussed.* Before loans are made, County Supervisors will make every effort to see that an understanding is reached with the applicants on the following points as they apply to the type of assistance involved:

(1) Farm and Home Planning.

(2) Budgeting.

(3) Record keeping.

(4) FmHA visits.

(5) Analysis of income and expenses.

(6) Supervised bank accounts.

(7) Planning and performing development work.

(8) Use of funds.

(9) Security requirements.

(10) Care and maintenance of security.

(11) Accounting for security property.

(12) Repayment of loans.

(13) Interest credits and recapture.

(14) Moratorium.

(15) Graduating to other credit sources.

(16) Direct payment to the Finance Office, when applicable.

(17) Appeal procedure.

§ 1910.9 Supplemental material to be provided by State Offices.

To further assist County Supervisors to receive and process applications, the State Office may supplement this subpart with materials and information adapted to State and local conditions. Examples of the types of information that can be used effectively for the guidance of the County Supervisors are:

(a) Guides and suggestions for holding group meetings of applicants.

(b) Illustrative material for use in explaining the FmHA program to individuals and groups.

(c) Information or State statutes concerning community property or dower and curtesy rights, and how these laws affect loan programs and security requirements.

(d) Outreach material.

§ 1910.10 Preference.

(a) *Veterans.* Veteran's preference will be extended to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces: (1) During the period of April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941, through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955, or (4) for a period of more than 180 days, any part of which occurred after January 31, 1955, but on

or before May 7, 1975. For Rural Housing applicants, veteran's preference will be extended to the spouses and children of deceased servicemen who died in service during one of these periods. Veteran's preference will apply when:

(1) There is a shortage of funds.

(2) Obligating forms are ready to be submitted to the Finance Office, and

(3) There is more than one application having the same date.

(b) *Farmer Program loans.* In addition to the veteran's preference, the preference set out in § 1943.10 of Subpart A of Part 1943 of this chapter applies.

§ 1910.11 Special requirements.

(a) *Serviceman's Readjustment Act of 1944.* Section 512(a)(D) of the Serviceman's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Veterans Administration (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Veterans Administration Loan Guaranty Officers may, therefore, require VA loan applicants to apply to FmHA for loan assistance.

(b) *Veterans determined ineligible by FmHA.* If the veteran is unable to obtain a loan from FmHA, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the Loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by FmHA of the veteran's application and the specific reasons for rejection.

§§ 1910.12–1910.50 [Reserved]

Exhibit A—Letter for Information Needed for a Complete Farmer Program Application

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(insert address)

(Date)

Dear ————:

Please submit the following information to this office so that your loan request can be further considered:

(1) Completed Form FmHA 410–1, "Application for FmHA Services."

(2) If the applicant is a cooperative, corporation, partnership or joint operation:

(A) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(B) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(C) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(D) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to your farm training and/or experience and the individual members of an entity applicant.

(4) Any readily obtainable financial information for the past five years.

(5) Up to five years production history.

(6) A brief narrative describing the proposed operation and indicating the proposed size of the operation.

(7) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(8) Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification."

(9) A copy of any lease, contract, agreement, or option entered into by the applicant/entity which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(10) Form FmHA 440–32, "Request for Statement of Debts and Collateral." If you presently owe loans or have unpaid operating accounts or bills with other creditors, it is essential that we verify the unpaid balances of these debts. Please complete Form FmHA 440–32 for each of your present creditors. These forms are to be completed as follows: (Additional forms are available from our office.)

A. Enter the creditor's name and address in the top left portion of the form.

B. Enter your name and address on the line following "I," sign and date the form (bottom right).

C. Deliver the form(s) to each of your creditors and insure that they return the completed form to our office.

(11) A legal description of your owned farm, real estate property and/or a copy of your lease, including the legal descriptions of all rented crop land, whichever is applicable.

(12) Form FmHA 1945–29, "ASCS Verification of Farm Acreages Production and Benefits," (for emergency loan application only).

(13) Written evidence from your present lender (if you are presently farming) or other local lenders (and all lenders of an entity applicant) documenting your inability to obtain other credit, including a guaranteed loan. Copies of the lender's letter must be provided to our office.

(14) Applicant's Reference Letter List—this list must show complete address and credit account number if reference is a credit institution.

FmHA will mail Farm FmHA 410–8 letters to the references provided and they must be received back in the office before your application is considered complete.

OR

A credit report fee of $———— payable to the Farmers Home Administration. Upon receipt of your fee, a commercial credit report will be ordered and this report must be received by the FmHA County Office before your application is considered complete.

(15) Form FmHA 1910–5, "Request for Verification of Employment." This will be used only if you are relying on off-farm employment to pay part of your expenses.

(16) Form FmHA 424–1, "Development Plan."

The following FmHA forms are attached for your use in filing a complete application:

————Form FmHA 410–1, "Application for FmHA Services."

————Form FmHA 410–9, "Statement Required by the Privacy Act."

————Applicant Reference Letter List.

————Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

————Form(s) FmHA 1910–5, "Request for Verification of Employment," (if necessary).

————Form FmHA 431–2, "Farm and Home Plan."

————Form FmHA 1945–29, "ASCS Verification of Farm Acreage Production and Benefits," (if necessary).

————Form FmHA 1924–1, "Development Plan," (if necessary).

————Form FmHA 1940–20, "Request for Environmental Information," (if necessary).

————Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification."

(County Supervisor)

Exhibit B—Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert address)

Date

Dear ————:

The Farmers Home Administration (FmHA) has authority under the Consolidated Farm

and Rural Development Act to make limited resource farm ownership and operating loans to qualified applicants and FmHA borrowers.

The program provides credit at reduced interest rates to low-income farmers and ranchers whose farm operations and resources are so limited they cannot afford the regular interest rates for FmHA loans. The program is also intended to give beginning farmers and others a chance to receive the capital necessary to start a successful farming operation.

Borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans remortized or rescheduled at the limited resource interest rate.

In addition, those applicants/borrowers, who have been subjected to racial or ethnic prejudice or cultural bias, because of their identity as a member of a group without regard to their individual qualities, may be eligible for targeted direct farm ownership (FO) funds or acquisition/leasing of inventory farmland.

If you would like additional information regarding the limited resource loan program or the farm ownership Outreach Program for socially disadvantaged individuals, you should contact this office.

I will be more than happy to discuss the program in detail with you.

Sincerely,

County Supervisor

PART 1924—CONSTRUCTION AND REPAIR

12. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

13. Section 1924.1 is revised to read as follows:

§ 1924.1 Purpose.

This subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), Softwood Timber (ST), single unit Labor Housing (LH), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multi-unit (LH) loans and grants, and Rural Housing Site (RHS) loans.

14. In Part 1924, Subpart B (consisting of §§ 1924.51 through 1924.100 and Exhibit A) is revised to read as follows:

Subpart B—Management Advice to Individual Borrowers and Applicants

Sec.

Subpart B—Management Advice to Individual Borrowers and Applicants

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer program loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, joint operations, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST) loans, and/or Rural Housing loans for farm service buildings (RHF). This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a farmer program loan that is not collection-only or a judgment account. This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7 of Subpart A of Part 1965 of this chapter).

§§ 1924.52–1924.55 [Reserved]

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) *Ineligible applicants.* In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) *Eligible applicants.* In credit counseling with eligible applicants and borrowers, the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's credit-elsewhere requirements and assist in the determination of the amount of other credit best suited for the applicant or borrower.

§ 1924.57 Planning

(a) *Long-Time plans (Form FmHA 431–1, "Long-Time Farm and Home Plan").* This plan reflects long-time aims and objectives. It will be completed by each applicant or borrower engaged in farming who is receiving a loan when necessary major adjustments or improvements will not be completed during one crop year. The long-time plan will cover the period of time required to complete the major adjustments or improvements and will be revised as conditions require.

(b) *Annual plan (Form FmHA 431–2, "Farm and Home Plan." and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security").* These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431–2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision.

(1) Form FmHA 1962–1 must be completed once each year and revised as needed in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current Form FmHA 1962–1 in the file of a borrower with loans secured by chattels. Form FmHA 1962–1 should be filled out and signed at the same time as a Form FmHA 431–2 is signed, if a Form FmHA 431–2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431–2 shows the borrower plans to spend $10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the Form FmHA 1962–1

should show where the $10,000 will come from. (Example—Wheat, 3,000 Bushels Sold, August, $10,000, Purchase Equipment.) Form FmHA 431–2 will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(iii) Who are experiencing financial and/or production management problems.

(iv) Who are requesting servicing options on Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter while any appeal is pending. This may be an interim plan for determining the release of proceeds on Form FmHA 1962–1 for essential family living and farm operating expenses in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Such a plan does not have to meet the requirements of a feasible plan in paragraph (c)(5) of this section.

(v) Who have had payments deferred.

(vi) Who are making major adjustments to their operation.

(vii) Who have limited resource loans.

(viii) Who have FmHA loans secured by crops, livestock, and livestock products marketed in the regular course of business.

(2) If the County Supervisor and the borrower cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431–2 and 1962–1 when a new loan, a subsequent loan, a subordination request, or a transfer and assumption is involved, the loan will not be made and any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter. When the above transactions are not involved, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases for essential family living (see § 1924.57 (c)(5)(iv) of this subpart) and farm operating expenses. These decisions will be based on sound judgment supported by the facts surrounding the request for release and fully explained to the borrower. In addition FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and the borrower will sign a Farm and Home Plan, when applicable, and a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962–1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

(3) In certain cases the borrower may not indicate any disagreement with the planned use of proceeds on the Form FmHA 1962–1, but may refuse to sign the form. For these cases, the County Supervisor will sign the form and mail it to the borrower with a cover letter explaining that FmHA considers the document binding unless the borrower disagrees with the planned use of proceeds and wishes to appeal in accordance with Subpart B of Part 1900 of this chapter. Borrowers that do not abide by the document will be handled in accordance with § 1962.18 of Subpart A of Part 1962 of this chapter.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Stress the need to correlate long-time and annual plans when both are being developed.

(2) Develop a list of key farm management and financial management practices for major enterprises, which will be updated annually. The County Supervisor will advise borrowers of these practices and those practices not already used by a borrower will be incorporated into the operation when developing long-time and annual plans.

(3) Require applicants, when developing their long-time and annual plans, to take into consideration any plans developed, with the assistance of the Soil Conservation Service (SCS), the Extension Service (ES), or other agency or farm management service. When such plans are not used the County Supervisor will document in the file the reasons for not using the plans.

(4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Form FmHA 1962–1 *must* provide for the release of sufficient income to pay essential farm operating and family living expenses.

(5) Determine the feasibility of the Farm and Home Plans. A feasible plan is necessary if a loan is being made or a servicing action is being taken. A feasible plan is not necessary if the only reason for developing the plan is to complete a Form FmHA 1962–1 in accordance with paragraph (b)(1)(iv) of this section. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(i) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(ii) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(iii) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(iv) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity and the immediate members of the family who reside in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants which indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

(6) Will send borrowers with loans secured by chattels 60 to 75 days prior to the expiration date for Form FmHA 1962–1 a letter similar to Exhibit A of this subpart, with Attachment 1. A new Farm and Home Plan, or other similar plans of operation acceptable to FmHA, and a new Form FmHA 1962–1 will be developed and completed for the upcoming year of operation prior to the expiration of the existing Form FmHA 1962–1. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with § 1905.5(d) of Subpart A of Part

1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for follow-up by the County Supervisor.

(7) Verify that the plan is consistent with the applicable highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(d) *Documentation and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. For existing farmers, actual production and financial history for the past 5 years will be utilized. For those with less than a 5 year history, the applicant's actual production history will be used. This will be determined by the actual yields taken from the applicant's reliable records or the Agricultural Stabilization and Conservation Service (ASCS) "actual yields." When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yields are less than the County average yields, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used. For beginning farmers, the County Supervisor will consider ASCS records, Extension Service (ES) data, County averages, State averages, or other reliable sources of data to develop the projections.

(2) Unit prices for all agricultural commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued annually to comply with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs and other factors that establish a regional pattern for unit prices within the State. These commodity prices will be established in the same manner as set forth in § 1945.163 of Subpart D of Part 1945 of this chapter, by averaging the *monthly market prices of each commodity for the previous 12-month period.* The monthly average market prices will be provided by the USDA National Agricultural Statistics Service (NASS), or similar State or Federal agency or body. If statewide figures are not available, the State Director will consult with other agricultural agency representatives and agricultural lenders in the local area before establishing commodity prices. State Directors and Farmer Program Chiefs in adjoining states will consult each other and will resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use these prices. In addition, the supplement required in this section for commodity prices will also contain the 5 year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). This information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

(3) Form FmHA 1962–1 will be revised whenever major changes (examples of major changes are: Feeder pig to sow operation, cow/calf to feeder steer operation, dairy to rowcrop, etc.) in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur and the County Supervisor will be responsible for determining if the requested change is major or not. The Form FmHA 1962–1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962–1. Also, if the changes would result in a major change in the operation, a new farm plan must be developed. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases which would be average for the area for essential family living and farm operating expenses. Those borrowers whose requests are in excess of the average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file. In addition, FmHA *must* make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding. (Revised 8–26–87, PN 62.)

§ 1924.58 Recordkeeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrowers' farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and maintain a recordkeeping system which adequately meets the needs of their farming operation and which provides, as a minimum, a record of the cash receipts and expenditures, end of year balance sheets, and an income statement. Borrowers receiving EM loans of $100,000 or more will be required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer recordkeeping system when available.

(2) County Supervisors will determine whether borrowers have selected, established, and are maintaining adequate recordkeeping systems. Such systems may include the farm record book available through FmHA (Form FmHA 432–1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial recordkeeping or accounting service, which is acceptable to FmHA.

(3) Failure of a borrower to maintain and provide adequate records to FmHA will be cause for FmHA to reject a borrower for further financial assistance. Borrowers can also be

denied loan servicing programs if the borrower has been previously advised on how to keep adequate records. The borrower's case file will document that the borrower was previously advised of the record keeping requirements.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action. The record must state the advice that was given and any problems noted.

(d) *Farm visits.* A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, who have a limited resource loan, who have been sent Exhibit A of Subpart S of Part 1951 of this chapter or who have had their loans reamortized, rescheduled, consolidated, written down and/or deferred. The District Director will visit a sufficient number of borrowers to assure that the cases are being properly supervised. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(1) Visits will be coordinated with required inspections of security.

(2) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have been indebted less than one full crop year or have a limited resource loan.

(ii) Borrowers who have been sent Exhibit A of Subpart S of Part 1951 of this chapter.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred or had their loans restructured.

(iv) Borrowers receiving annual production-type loans.

(v) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses will develop information for sound lending and supervisory decisions and assist borrowers in utilizing sound business planning and management practices. Specifically, analyses are used to:

(1) Show the operator the cost or profit of a management decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervision will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next crop year; and help them make sound management decisions.

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis:

(1) Resources available.

(2) Options for types of enterprises available for the operation such corn v. soybeans, selling the crop v. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations.

(5) Financial progress—increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operations.

(7) Debt repayment as compared to money available to pay debts.

(8) Experience and ability of the borrower.

(9) Availability and cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Determine the date and place of the analysis, and schedule the analysis at the time of year when the most effective results will be obtained.

(2) Assist the borrower in completing the "actual" columns on Forms FmHA 431–2 and 1962–1 and in completing Form FmHA 431–2 for the next year.

(3) Make a complete entry in the case file running record of the items discussed with the borrower and results and agreements reached during the analysis, underscoring those items requiring follow-up action.

(4) Record the results on Form FmHA 1960–12, "Financial Farm Analysis Summary."

(d) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Who are at least 180 days delinquent.

(2) Who are experiencing financial and/or production management problems.

(3) Who are reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(5) Who have been granted a deferral.

(6) Who have limited resource loan(s).

(7) Who have softwood timber loan(s).

(8) Who have conservation easements and/or had thair loans written down.

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. Forms FmHA 431–4, "Business Analysis-Nonagriculture Enterprise," and FmHA 432–10, "Business and Family Record Book," available at most FmHA offices, can be used for these purposes.

§ 1924.62 State supplements.

State supplements will be issued as necessary to implement this subpart and assure that a list of key farm management and financial management practices is established, and kept current in each County Office. The State supplement should set the time of year for conducting analyses.

§§ 1924.63–1924.70 [Reserved]

§ 1924.71 Delinquent borrowers.

The Finance Office will send each FmHA County Office a status report of farmer program borrower accounts as of December 31, each year. Farmer

Program accounts that are shown as delinquent on the December 31 report will be serviced in accordance with Subpart S of Part 1951 of this chapter.

§ 1924.72 [Reserved]

§ 1924.73 Follow-up supervisory actions by District Directors and State Office staff.

(a) *Follow-up by the District Directors.* The District Director is responsible for seeing that the county office staff correctly conduct analysis with borrowers listed in § 1924.60(d) of this subpart in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine what further training is needed by the County Supervisor in supervising such cases. The District Director should continue follow-up actions periodically as needed to obtain the desired results in each county office area. The District Director will report in writing to the State Director any deficiencies found and any need for additional training.

(b) *Follow-up by State Office staff.* (1) The State Director is responsible for seeing that the special actions prescribed by this subpart are carried out by the County Supervisors and District Directors.

(2) Loan chiefs and specialists should review a representative sample of cases of those borrowers listed in § 1924.60(d) of this subpart during each visit to a county office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any is needed for the District Director and County Supervisor.

(3) The State and/or District Offices should personally review the progress made in servicing the cases of those borrowers listed in § 1924.60(d) of this subpart.

§§ 1924.74–1924.100 [Reserved]

Exhibit A—Letter To Borrower Regarding Releases of Farm Income to Pay Family Living and Farm Operating Expenses

UNITED STATE DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

(Date)

(Borrower's Name)

(Address)

Dear ———:

Pub. L. 100–233 requires the Farmers Home Administration (FmHA) to notify you that you are entitled to have FmHA release proceeds from the sale of crops, livestock and poultry products and other property regularly sold in operating the farm so that you can pay essential family living and farm operating expenses. FmHA must also release ASCS and CCC payments which it holds as security for this purpose. The releases will continue up until the time FmHA accelerates your account.

To provide these releases to you, FmHA regulations require that you fill out Form FmHA 1962–1 to explain what items of FmHA security you intend to sell during this crop year. Please see Attachment 1 of this letter for an explanation of this form. We request that you contact this office within 10 days of when you receive this letter so that we can complete this form and you can receive releases on a timely basis.

Sincerely,

County Supervisor

Attachment.

FmHA will help you plan how to use the money you receive when you sell chattel property which is under lien to FmHA. Once a year, you will be asked to complete a form (Form FmHA 1962–1) which will show what crops, livestock and livestock products you plan to sell the approximate prices you expect to receive, who you expect will buy your farm products and how the money will be used. This form will give you and FmHA a clear idea of what you expect from your operation and how you plan to use sales proceeds. The form will always provide for paying essential family living and farm operating expenses. However, FmHA will determine how much money it will release from your crop proceeds in accordance with its regulations. This will depend on the nature of your farming operation.

If the County Supervisor does not agree with your plan for using sales proceeds, you will receive a letter which explains why the County Supervisor does not agree with your plan and which also explains how you may appeal the County Supervisor's decision. While an appeal is pending, FmHA will allow sales proceeds to be used to pay essential family living and farm operating expenses. Once a plan has been agreed on, FmHA expects you to abide by the plan and you can expect FmHA to abide by the plan. The plan can always be revised or changed, as circumstances require, if you and FmHA agree to the changes.

Some borrowers believe or have heard that the Form FmHA 1962–1 is an inflexible document and that it requires a borrower to make projections which are too detailed. That is not true. Planned sales can be listed by month, by quarter or by whatever period suits your operation the best. The form does not have to be completed to show each individual animal, bushel, bale, etc. The form is a plan; it contains only projections. We expect you to base your projection on your past performance, but we know that you cannot predict exactly how many bushels per acre you will harvest, exactly how many animals you will wean, etc. We also realize that you cannot predict prices to the penny. Sometimes you will have a buyer for your products who is not listed on the form. All we expect you to do is be as accurate as you can. Later, if the plan needs to be changed, you and the County Supervisor can work together to revise it. Many revisions can be agreed on over the telephone and a trip to the County Office is not always needed. You are not required to check with FmHA before making a sale just because the price you expect to receive is different from what you had planned to receive. However, a difference in price might require your plan to be revised, so FmHA wants to be told about the difference after the sale is made. You are expected to check with FmHA before making a major change in your operation or before using sale proceeds in a way different than you had planned, so that your plan can be revised. If at all possible. You should let FmHA know if you are going to sell to a buyer who is not listed on the form.

PART 1941—OPERATING LOANS

15. The authority citation for Part 1941 reads as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

16. Sections 1941.1 through 1941.50 are revised and Exhibit C is added to read as follows:

Subpart A—Operating Loan Policies, Procedures, and Authorizations

Sec.

* * * * *

Exhibit C—Controlled Substance

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL–Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4–H, Future Farmers of America, and similar organizations. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands.

§ 1941.2 Objectives.

The basic objective of the OL loan program is to provide credit and management assistance to farmers, ranchers, and rural youth to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere.

§ 1941.3 Management assistance.

As provided in Subpart B of Part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in Tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(c) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family who reside in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family-size. The State Director will establish, either on a State-wide basis or regional basis, State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants who indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

Fish. Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resources applicant. An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm) including a new operator, with a low income who demonstrates a need to

maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community. (For limited resource loans to applicants with small farm enterprises in AL, FL, GA, LA, MS, MO, and SC, refer to Exhibit B of this subpart.)

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

Recreation enterprise. An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Rural youth. A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

Rural youth projects. Modest projects initiated, developed, and carried out by rural youths participating in 4–H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

State or United States. The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify, that adequate credit is not available, with or without a guarantee or subordination to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When, based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(d) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s), so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA.

(e) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operator as individuals will be considered and used by an applicant in obtaining credit from other sources.

(f) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§§ 1941.7–1941.10 [Reserved]

§ 1941.11 Applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1941.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify

the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see § 1941.4 of this subpart.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members, stockholders, partners or joint operators who are individuals and not cooperative(s), corporation(s), partnership(s), or joint operation(s).

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1941.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown of the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of the INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(iv) They and the entity itself will honestly try to carry out the condition and terms of the loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4(j) of this subpart:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners, or joint operators must own *or* operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(8) If each member's, partner's, stockholder's, or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section.

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4–H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower case file.

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility requirements in § 1941.12 of this subpart, whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering all servicing options in Subpart S of Part 1951 of this chapter, including distressed Farmer Programs loans for softwood timber production in applicable areas, may qualify for annual production loans under this section or subordinations under Subpart A of Part 1962 and Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA.

(2) The borrower has been unable to pay accounts as scheduled due to:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or

underemployment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management practices spelled out in Item D of Form FmHA 431–2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security, and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplier credit for the production and marketing cycle can be repaid from the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Non-disturbance agreements will be obtained, for the term of the FmHA annual production loan being made, from all creditors to whom the applicant is indebted when repayment of the indebtedness is behind schedule and will remain so at the time the FmHA loan is approved.

(b) Loan funds will be used to pay annual operating and family living expenses only, as further explained in § 1941.16 of this subpart.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(c) of this subpart.

(e) Form FmHA 1941–1, "Criteria for Continuing Assistance to Delinquent Borrowers," is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941–A–1, "Advice to Borrower of Financial Condition," of their serious financial conditions; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision will be made, at that time, whether FmHA will consider assistance for another year to continue their operations. The County Supervisor will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941–A–1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

§ 1941.15 [Reserved]

§ 1941.16 Loan purposes.

Except for entity borrowers, 10 percent or $5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation, and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, poultry, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than $7,500 in a fiscal year for real estate improvements or repairs. The following determinations must be made before an OL loan is made for real estate improvements:

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

(m) To plant softwood timber on marginal land which was previously used to produce an agricultural commodity or as pasture.

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant and owed by anyone who will sign the note as a cosigner will exceed $200,000 at loan closing.

(b) If the total outstanding youth loan principal balance will exceed $5,000 at loan closing.

(c) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(d) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as

further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as consolidation, rescheduling or deferral is taken to determine the interest rate to be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note.

(2) Ordinarily, loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will be scheduled for payment on the first January 1 after the income from the year's operations is received. Under certain circumstances these payments may be scheduled over longer periods. Circumstances which warrant an extended repayment schedule are factors such as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery form disaster or economic reverses. Crops only are not sufficient security when repayment is scheduled over the longer period. The County Supervisor may use Form FmHA 440–9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installments scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

(c) *Consolidation or rescheduling.* When the loan approval official determines that consolidation or rescheduling will assist in the orderly collection of an OL loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

§ 1941.19 Security.

Ordinarily, the security must be adequate in the opinion of the loan approval official to assure repayment of the loan. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the loan approval official in determining whether the loan should be made, except that the amount refinanced may not exceed the value of the security. Except as shown in paragraph (a) of this section, the loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner or a pledge of security from someone other than the borrower(s). Generally, a pledge of security is preferable to a cosigner.

(a) *Exceptions.* (1) A lien will not be taken on property that cannot be made subject to a valid lien.

(2) A borrower is not required to use separate and identifiable collateral to secure two or more loans made, insured or guaranteed, provided the outstanding amount of such loans does not exceed the total value of the collateral used.

(3) A lien will not be taken on subsistence livestock, household goods, and small tools and small equipment, such as hand tools, power lawn mowers, and other items of like type not needed for security purposes.

(4) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(5) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. When the amount of the loan exceeds the equity in chattel security by more than $10,000, the best lien obtainable will be taken on real estate having sufficient collateral equity to fully secure the loan(s) being made. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427–1 (State), "Real Estate Mortgage for ———," will be used to obtain such a lien, unless a State supplement requires a different form.

(c) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops" (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(d) *Insurance.* See Part 1941, Subpart B, § 1941.88 for insurance requirements.

(e) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL

loan(s) as individual(s) or when OL loans are made to eligible individuals, who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer programs insured or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(f) *Income from products and program payments.* Assignments and consents relating to income from products and program payments will be used when necessary to protect FmHA's interest as follows:

(1) Form FmHA 441–8, "Assignment of Proceeds from the Sale of Agricultural Products," for products or income in which FmHA does not have a security interest under UCC. Other forms approved by OGC may be used when this form is not adequate.

(2) Form FmHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," for products or income, except dairy products, in which FmHA has a security interest under UCC.

(3) Form FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," for dairy products in which FmHA has a security interest under UCC.

(4) Forms provided by ASCS will be used for assignment of incentive and other agricultural program payments.

(g) *Fixtures.* A security interest may be taken in fixtures. An item is generally considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself. When determined necessary by OGC, a State supplement will be issued to further explain the taking of a security interest in fixtures.

(1) A security interest taken in goods *before* they become fixtures has priority over real estate interest holders.

(2) A security interest taken in goods *after* they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute Form FmHA 440–26, "Consent and Subordination Agreement," or Form FmHA 440–6, "Severance Agreement."

(h) *Milkbase and grazing permits.* The advice of OGC will be obtained as to how to perfect a security interest when these items are financed or taken as security.

(i) *Stock in cooperative associations.* Loans only for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided the security interest has value to FmHA. A security interest also may be taken in dividends to be paid on stock, memberships, or patronage, or in undivided profits and other retainages. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC. Stock certificates and similar collateral will be kept in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the FmHA interest.

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of Part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, FmHA will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of the Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archeological significance the provisions of Subpart F of Part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a non-farm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals. Chattel and real estate appraisals will be made on Form FmHA 440–21, "Appraisal of Chattel Property," and FmHA 422–1, "Appraisal Report (FARM TRACT)," and FmHA 1922–11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

(a) A chattel appraisal is required when debts refinanced exceed $5,000 and in any case the County Supervisor determines advisable. When an appraisal is not required, an estimate of the market value of the chattels will be recorded in the running record.

(b) A real estate appraisal is required when more than $10,000 equity in the real estate is needed as security for refinancing. When an appraisal is not required, an estimate of the market value of the real estate will be recorded in the running record.

(c) An appraisal will be made if the loan approval official determines it is needed to evaluate the soundness of the loan.

§§ 1941.26–1941.28 [Reserved]

§ 1941.29 Relationship between FmHA loans, insured and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) A guaranteed OL loan may be made to an insured borrower provided:

(1) The outstanding insured and guaranteed OL principal balance owed by the loan applicant or owed by anyone who will sign the note as cosigner may not exceed $400,000 at loan closing.

(2) The outstanding amount of such loans does not exceed the total value of the collateral so used.

(c) An insured OL loan will be made to refinance a guaranteed OL loan when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the insured OL loan is closed.

(d) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE loan and any FO, SW, RL, and/or OL loans will not exceed $650,000.

§ 1941.30 Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440–2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

§ 1941.31 [Reserved]

§ 1941.32 Loan docket processing.

See Exhibit A of this subpart for the loan docket processing guide.

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided the total insured operating loan principal balance at loan closing does not exceed $200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is based on a feasible plan or on other plans or documents acceptable to FmHA.

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained;

(v) A signed copy of Form FmHA 1940–1 will be sent to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) and within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be cancelled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be processed with Form(s) 1940–10 in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(c) *Cancellation of advances.* When an advance is to be canceled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

§§ 1941.36–1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with Subpart B of Part 1941 of this chapter.

§§ 1941.39–1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

§§ 1941.43–1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

* * * * *

Exhibit C—Controlled Substance

Note: Exhibit C referenced in this subpart is available in any FmHA office.

Subpart B—Closing Loans Secured by Chattels

17. Section 1941.54 is amended by revising paragraph (b) to read as follows:

§ 1941.54 Promissory note.

* * * * *

(b) *Signatures.* (1) *Individuals.* Only the applicant is required to sign the promissory note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The appropriate officer will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

18. Section 1941.57 is amended by revising paragraph (a)(1) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) * * *

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

* * * * *

19. Section 1941.88 is amended by redesignating paragraphs (a) through (d) as (b) through (e), adding new paragraph (a) and revising newly designated paragraphs (b) and (c) to read as follows:

§ 1941.88 Insurance.

* * * * *

(a) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA requires an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" is taken by FmHA, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, not withstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates on which each borrower's crop insurance premium(s) is due. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA County Office.

(b) *Chattels.* Borrowers will be encouraged to carry insurance on chattel property that serves as security for a loan and on other chattel and real property, in order to protect themselves against losses resulting from accidents, theft and other hazards existing in the area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and other inventory centrally stored over an extended period of time.

(c) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, applied to debts secured by prior liens, or applied to the OL loan being made.

* * * * *

20. Section 1941.96 is amended by revising paragraph (b) to read as follows:

§ 1941.96 Changes in use of loan funds.

* * * * *

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940–17, "Promissory Note," will not be revised nor will a corrected Form FmHA 1941–7, "OL—other Credit Analysis," be prepared. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431–2, "Farm and Home Plan," also on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

21. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

22. Sections 1943.1 through 1943.50 are revised and Exhibit B is added to read as follows:

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

Sec.

* * * * *

Exhibit B—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.1 Introduction.

This subpart contains regulations for making inital and subsequent insured Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of this subpart for making FO loans to entrymen on unpatented public lands.

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(c) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an

individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants which indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning more than a 50 percant interest in a cooperative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant. An applicant who has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify, that adequate credit elsewhere is not available with or without a guarantee or a subordination to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is able to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the finding recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA.

(e) Property and interests in property owned and income received by an individual applicant, a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real

property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, must have prior National Office approval before being issued.

§§ 1943.8–1943.9 [Reserved]

§ 1943.10 Preference.

(a) In addition to the preference established in Subpart A of Part 1910 of this chapter, an application for a loan for land purchase from an applicant who:

(1) Has a dependent family, or

(2) Is an owner of livestock and farm implements necessary to successfully carry on farming operations, or

(3) Is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's Farm Ownership (FO) loan allocation designated for socially disadvantaged applicants will be used exclusively to assist such applicants to purchase farm land. (See Exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration Loans to Socially Disadvantaged Applicants.")

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirement must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4(i) of this subpart).

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators as individuals.

(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporation(s), partnership(s), or joint operation(s).

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641 "Application for Verification of Information from

Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners or joint operators.

(iv) Honestly try to carry out the conditions and terms of the loan. This requirement must be met by the individual members, stockholders, partners or joint operators.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(6) If applying as a limited resource applicant, as defined in § 1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners or joint operators.

(ii) The entity and *all* the members, stockholders, partners or joint operators must own *or* operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

§ 1943.13 Outreach program for the socially disadvantaged.

The purpose of this subpart is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) Farm Ownership (FO) Outreach Program to Socially Disadvantaged Individuals in accordance with sections 617 and 623 of the Agricultural Credit Act of 1987.

(a) *Goals.* The FmHA Socially Disadvantaged Outreach Program is a concerted effort to:

(1) Make the FO loan program and the acquisition of inventory farmland more accessible and available to socially disadvantaged individuals.

(2) Surface and correct problems and obstacles that prevent the participation of socially disadvantaged individuals in receiving FO loans and acquiring inventory farmland.

(3) Increase the production level of FO loans and sale/lease of inventory farmland to socially disadvantaged individuals.

(4) Target direct FO loan funds and inventory farmland to ensure participation of socially disadvantaged individuals in the FO loan program and acquisition of inventory farmland in accordance with Exhibit B of this subpart.

(5) Provide pamphlets, publications and information on the FO loan program and acquisition of inventory farmland to socially disadvantaged individuals and other interested individuals and groups.

(6) Provide assistance as necessary to individuals of socially disadvantaged groups to assure that the application process is expedient and complete. Appropriate assistance necessary will also be provided to approved applicants through special farm initiatives to assure that sound operating procedures are implemented to enhance the applicants' chances for successfully achieving the objectives of the FO loan program.

(b) *Field action.* The FmHA State Director shall designate the State Civil Rights Coordinator to coordinate "Outreach" activities with the County Supervisors and District Directors in meeting targeting goals for direct FO loans and the acquisition of inventory farmland by socially disadvantaged individuals. The State Coordinators of socially disadvantaged individual activities will:

(1) Maintain close liaison with local FmHA supervisors and officials in those counties serving socially disadvantaged individuals to assure that technical assistance is provided to socially disadvantaged individuals so that the application process is expeditious and complete. In addition, appropriate technical assistance will be provided to approved applicants/borrowers to assure that sound operating practices are implemented to enhance the applicant's chances for achieving the loan objectives.

(2) Work closely with FmHA County, District, State and National Office representatives to remove obstacles and solve problems that impede assistance to socially disadvantaged individuals in receiving direct FO loan funds and acquiring inventory farmland.

(3) Be familiar with the FO loan program and acquisition of inventory farmland, including security and eligibility requirements.

(4) As necessary, attend pertinent meetings of local, State and Federal Government agencies concerned with the economic and social development of socially disadvantaged individuals.

(5) Arrange for the training of individuals and interested groups concerned with the socially disadvantaged in the packaging and distribution of materials for use in the FO loan program and acquisition of inventory farmland.

(6) Initiate special informational outreach activities in an effort to inform potential farm applicants, who are members of a socially disadvantaged group, of the availability of targeted direct FO loan funds and inventory farmland, to enable them to become farm operators/owners.

(i) Information will be provided in a county office area to community and farm oriented organizations, agriculture schools, other USDA agencies and community leaders who are knowledgeable of the farming community.

(ii) In addition, news articles, announcements and radio broadcasts regarding FmHA's outreach efforts in providing FO loans and the acquisition of inventory farmland available to socially disadvantaged groups shall be placed in media most partronized by members of socially disadvantaged groups.

(c) *Reports.* (1) State Directors will keep the National Office advised of any problems and obstacles in carrying out the FO Outreach Program to socially disadvantaged individuals which prevents their participation in the FO loan program with respect to obtaining direct loan assistance and acquiring inventory farmland.

(2) Any changes in personnel serving as State Coordinator of the FO Outreach Program for socially disadvantaged individuals will be reported to the National Office.

(3) Each State Director will make a semi-annual memorandum report on January 1 and July 1 of each year on FO Outreach activities and accomplishment. The report will specifically reflect what has been done to carry out the items set forth in § 1943.13(b) of this subpart. The report will be sent to the National Office, Attention: Assistant Administrator, Farmer Programs.

§§ 1943.14–1943.15 [Reserved]

§ 1943.16 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(2) An applicant's portion of the cost of land which is being subdivided.

(3) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the FO security requirements for taking a junior lien.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(b) Construct, buy, or improve buildings and facilities needed on or in close proximity to, the applicant's farm, including:

(1) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants for nonfarm enterprises, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Construction costs for methane and gas facilities and essential equipment.

(c) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water, powerlines, gas lines, and other facilities necessary for the successful operation of the farm may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cast of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds are advanced is likely to exceed $1,000, the applicant will assign the paymant to FmHA.

(1) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19(b) of this subpart) or on land in which the applicant owns an undivided interest, provided:

(i) The amount of loan funds used on such land is limited $25,000;

(ii) There is adequate security for the loan; and

(iii) The tract with defective title or undivided interest is not to be included in the appraisal report.

(2) Funds may be used to pay for development costs on land leased by the applicant provided:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of the loan funds used for improvements on leased land will not exceed $10,000.

(d) Refinance debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refinanced unless such refinancing is necessary to enable borrowers to continue farming. The State Director's consent is required before FO funds can be used to refinance other FmHA debts.

(e) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, and first year insurance premiums, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(f) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland. A major portion of the gross total income must be farm income. The nonfarm enterprise income will be supplemental income.

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding insured FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant and owed by anyone who will sign the note as a cosigner will exceed the lesser of $200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29(b) of this subpart is exceeded.

(b) Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any FO loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate is established in this Exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4(i) of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise, when appropriate, indicate that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as reamortization or deferral is taken to determine the interest rate to be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 Subpart A of Part 1951 of this chapter.)

§ 1943.19 Security.

(a) *General.* Each FO loan will be secured by real estate or by real estate and a combination of chattels and/or other security.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm owned or to be owned by applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable;

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report, and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter [FmHA Instruction 427.1), except as modified by the "Memorandum of Understanding-FHA–FCA," Exhibit B of this Subpart.

(4) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1941 and Subpart A of Part 1962 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Security—nonfarm enterprise.* When an FO loan is made just to finance a nonfarm enterprise, even though a majority of the products are used on the farm such as alcohol or methane gas, a lien will be taken on the nonfarm enterprise facility and sufficient other property to adequately secure the loan. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(g) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals,* who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an FO loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same collateral can secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.20–1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable

Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must provide evidence that they have received an ATF operating permit.

§ 1943.24 Special requirements.

(a) *Determining suitability of farms.* The County Supervisor is responsible for making a preliminary determination as to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm; roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it a suitable farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions to this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm. A real estate lien will be taken on such dwelling.

(ii) The applicant has a long-term lease on acceptable rental buildings that are adjacant to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(iv) A nonfarm enterprise facility does not have to be physically located on the farm.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in Subpart A of Part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.23(a) of this subpart for information about mudslide and flood insurance.

(3) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance.

(4) Personal property insurance will be obtained to insure against chattel security losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Income from nonfarm enterprises.* Nonfarm enterprises will be analyzed to determine soundness.

(1) Form FmHA 431–4, "Business Analysis—Nonagricultural Enterprise," will be used to document nonfarm enterprises unless the applicant uses another suitable form.

(2) The net cash income from the nonfarm enterprise will be entered as nonfarm income in the Farm and Home Plan.

(g) *Other real estate and assets.* Other assets not used directly in the farming operation will be handled as follows:

(1) FO loans may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(i) The real estate or interests therein furnish employment or income which is essential to the applicant's success.

(ii) Sale of the property will not eliminate the need for FmHA credit.

(iii) Retention of the real estate will not cause the operation to be larger than a family farm.

(2) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree by signing Form FmHA 443–17, "Agreement to Sell Nonessential Real Estate," to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years aftar closing.

(3) The applicant must agree to use the proceeds from the sale of other real estate to:

(i) Pay costs and taxes connected with the sale;

(ii) Reduce the FmHA debt or any prior lien;

(iii) Make essential capital purchases; or

(iv) Pay essential farm and home expenses.

(4) Real estate or an interest in real estate which is retained after loan closing, but which is not part of the farm will not be included in:

(i) The appraisal report.

(ii) The security instrument for the loan.

(iii) The total debt against the security.

(h) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(i) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(j) *Subdivision of large tracts of farmland into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, rights-of-way, easements, and other services.

(4) Disposition or omission of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(k) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(l) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate will be expected to pay the current rate when able to do so.

§ 1943.25 Options, planning and appraisals.

(a) *Optioning land.* An applicant is responsible for obtaining options on real property bought. Form FmHA 440–34, "Option to Purchase Real Property" should be use if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;

(iv) Access to the land or any part of it;

(v) The part responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant should decide if the applicant wants the option recorded and is responsible for paying any recording fees.

(3) Form FmHA 443–2, "Option for Purchase of Farm-Land to be Subdivided" may be used if a large tract will be subdivided into separate farms.

(i) Assignment of the interest of the applicant in whose name the tract is obtained will be made to each applicant who will acquire one of the units.

(ii) Form FmHA 443–3, "Assignment of Interest in Option (Land to be Subdivided)" may be used.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this Chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security.

(2) Appraisals are not required if:

(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.

(3) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

(4) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real

estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security the following items apply:

(i) Form FmHA 440–21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with Part 1924, Subpart A. The provisions of Subpart E of Part 1901 will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) Subpart R of Part 2000 of this chapter, "Memorandum of Understanding FHA–FCA," (available in any FmHA Office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA loans. It should also cover items such as appraisal methods, title clearance, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.29 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured FO loans may be made simultaneously with other FmHA loans, and to borrowers presently indebted to FmHA, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.

(b) An insured FO loan may be made to a borrower with an outstanding guaranteed FO, SW, or RL loan when:

(1) The total insured and guaranteed FO, SW, and RL principal balance, including the new loan, owed by the loan applicant or owed by anyone who will sign the note as co-signer does not exceed $300,000 at loan closing.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) All other requirements of the loan are met.

(c) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an FO loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any SW, RL, OL, and FO loans will not exceed $650,000.

(d) A borrower may use the same collateral to secure two or more loans, insured or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.30 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.31 [Reserved]

§ 1943.32 Loan docket processing and forms.

(a) *Forms.* The following table is a guide on the forms needed and distribution:

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400–1—Equal opportunity agreement	2	1–O	1–O	1–C
400–3—Notice to contractors and applicants	3		1–C	1–C
400–4—Assurance agreement	2	2–O&C	1–O	1–C
400–6—Compliance statement	3		1–O	1–C
403–1 [1]—Debt adjustment agreement	3(5)	1–O	1–O	1–C
410–1—Application for FmHA services	1(8)	1–O	1–O	
410–8—Applicant reference letter	1		1–O	
410–9—Statement required by the Privacy Act	2	2–O&C	1–C	1–O
410–10—Privacy Act statement to references	2(10)		1–C	
422–1—Appraisal report—farm tract	1		1–O	
422–2 [1]—Supplemental report—irrigation, drainage, levee, and minerals	1		1–O	
424–1 [1]—Development plan	2(3)	1–O	1–O	1–C
427–8 [1]—Agreement with prior lienholder	3(6)		1–O	1–C
431–1 [1]—Long-time farm and home plan	2	2–O&C	1–C	1–O
431–2 [1]—Farm and home plan	1(2)	1–O	1–O	1–C
431–4 [1]—Business analysis–nonagricultural enterprise	2	1–O	1–C	1–O
1940–1—Request for obligation of funds	4(4)	2–O&C(9)	3–O&2C	1–O
440–2—County committee certification or recommendation	1		1–O	
440–9 [1]—Supplementary payment agreement	2	1–O	1–O	1–C
440–21 [1]—Appraisal of chattel property	1		1–O	
440–34 [1]—Option to purchase real property	3(1)	2–O&C	1–O	1–C

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
440-45—Nondiscrimination certificate (individual housing)	2	1-O	1-O	1-C
[1]940-21, 1940-22, or Exhibit H, Subpart G, Part 1940—Environmental review	1		1-O	
443-12 [2]—Farm ownership and individual soil and water fund analysis	3		1-C	
443-17 [1]—Agreement to sell nonessential real estate	2	2-O&C	1-O	1-C
1940-20 [1]—Request for environmental information	2	1-O	1-O	1-O
492-19 [1]—Characteristics of approved applicants	3(7)		1-C	
1924-14 [1]—Farmer program borrower responsibilities	2	2	1-O	1-C
1922-11 [1]—Appraisal for mineral rights	1		1-O	
443-8 [1]—Agreement (between seller, purchaser, and tenant)	4	4	1-C	1-C

O—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.

Notes:
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, three copies of plans and specifications will be required.
(4) An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
(5) Signed copy to creditor.
(6) Copy to lienholder.
(7) Copy to State Director.
(8) Record of applicant investigation, availability of other credit, and so forth, which remain with the docket.
(9) Applicant must sign and date this form.
(10) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.
(11) When a facility such as an alcohol still or methane plant provides energy and the major portion of such products are used on the farm, the enterprise will not be coded "NFE".

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to Farm and Home Plans, nonfarm enterprises, and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veterans' preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible.

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee.

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is based on a feasible plan or on other plans or documents acceptable to FmHA.

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approving official.

(c) *Loan disapproval.* The loan approving official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved.

(1) The reasons for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official or the reasons will be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal. (See Subpart B of Part 1900 of this chapter.)

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.34 Requesting title service and accepting option.

When the loan is approved, the following action will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1) when required, if this has not been done.

(b) The applicant will sign Form FmHA 440-35, "Acceptance of Option,"

and send the original to the seller if land is being acquired. A copy will be kept in the case folder. If land to be acquired will be subdivided the following action will be taken:

(1) Each assignee will sign Form FmHA 443–10, "Acceptance of Option by Assignee (Land to be Subdivided)."

(2) The buyer will sign Form FmHA 443–11, "Acceptance of Option by Buyer (Land to be Subdivided)."

(3) The originals of the forms will be mailed to the seller and copies retained in the County Office file.

(c) The applicant will arrange with the seller to take possession when land is being acquired. The following forms may be used if appropriate:

(1) Form FmHA 443–5, "Short-Term Lease of Optioned Land."

(2) Form FmHA 443–6, "Short-Term Lease (Between Purchaser and Seller)."

(3) Form FmHA 443–8, "Agreement (Between Seller, Purchaser, and Tenant)."

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be processed with Form(s) FmHA 1940–10, in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§§ 1943.36—1943.37 [Reserved]

§ 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in § 1943.19(b)(4) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for operating loans.

The following forms will be used for chattel security:

(1) Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440–25, "Financing Statement" or, when authorized, Form FmHA 440–A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan

will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443–16 is executed, appropriate notations will be made on Form FmHA 405–1, "Management System Card—Individual," to insure that the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940–17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgagee title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140–4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§ 1943.39–1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an

initial loan except that new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land that is not presently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a naw appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.45–1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

* * * * *

Exhibit B—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants

I. General

Provisions of the Agricultural Credit Act of 1987 require Farmers Home Administration (FmHA) to establish target participation rates for providing FmHA assistance to socially disadvantaged applicants. These rates are established to ensure that members of socially disadvantaged groups are provided assistance in acquiring FmHA inventory property and other available farmland. The target participation rate established for each State is based on the proportion of minority rural population to the total rural population in the State.

II. Implementation Responsibilities

States will meet their target participation rates in use of loan funds and sale of inventory property.

A. The target participation rate, as provided in this exhibit, will be applied to Insured Farm Ownership loan funds and inventory property in the following manner:

1. *Loan funds.* The targeted portion of a State's Fiscal Year Farm Ownership allocation, as outlined in FmHA Instruction 1940–L, Exhibit A, will be used exclusively to enable socially disadvantaged applicants to purchase farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation not be sufficient.

2. *Inventory property.* States will ensure that socially disadvantaged applicants have an opportunity to purchase, as a minimum, the number of inventory farms available October 1 of each year x a State's target participation rate. Sales of inventory property will be handled in accordance with applicable provisions of FmHA Instruction 1955–C.

III. Other Information

The county listings of target participation rates are provided by the National Office Farmer Programs to give assistance to States in targeting loan funds and assistance to counties with minority rural populations.

TOTAL U.S. PARTICIPATION RATE

State	Target participation rate (percent)
Alabama	21
Alaska	34
Arizona	39
Arkansas	13
California	20
Colorado	11
Connecticut	3
Delaware	17
Florida	14
Georgia	20
Hawaii	68
Idaho	6
Illinois	2
Indiana	1
Iowa	1
Kansas	3
Kentucky	3
Louisiana	25
Maine	1
Maryland	14
Massachusetts	2
Michigan	3
Minnesota	2
Mississippi	37
Missouri	2
Montana	8
Nebraska	2
Nevada	12
New Hampshire	1
New Jersey	8
New Mexico	57
New York	3
North Carolina	21
North Dakota	5
Ohio	2

TOTAL U.S. PARTICIPATION RATE—Continued

State	Target participation rate (percent)
Oklahoma	12
Oregon	5
Pennsylvania	2
Rhode Island	2
South Carolina	34
South Dakota	9
Tennessee	6
Texas	22
Utah	7
Vermont	1
Virginia	2
Washington	7
West Virginia	3
Wisconsin	2
Wyoming	7
U.S. total	10

23. Sections 1943.51 through 1943.100 are revised to read as follows:

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

Sec.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of this part for making SW loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA.

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interests, in accordance with Subpart B of Part 1924 of this chapter.

§ 1943.54 Definitions.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(c) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants which indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Indefinite parole. To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I–94, "Immigration on Indefinite Parole" card.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Leasehold. A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify, that adequate credit elsewhere is not available with or without a guarantee or subordination to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near

where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA.

(e) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals, will be considered and used by an applicant in obtaining credit from other sources.

§§ 1943.57–1943.60 [Reserved]

§ 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1943.62 Soil and Water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(6) Be the owner or operator of a farm after the loan is closed.

(7) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) *A cooperative, corporation, partnership or joint operation must:*

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(2) Honestly try to carry out the conditions and terms of the loan. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 1943.54 of this subpart for the definition of "United States"), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(4) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

(6) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(7) Be the owner or operator of the farm after the loan is made.

(8) If a tenant have satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(9) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

§ 1943.63–1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation such as:

(1) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(2) Drainage of land which is part of an operating farm unit.

(3) Land clearing.

(4) Sodding, subsoiling, land leveling, liming and fencing.

(5) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(6) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(7) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(8) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(9) Purchase or repair of special-purpose equipment such as terracing, land leveling and ditching equipment, provided:

(i) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(ii) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(10) Pay the cost of construction of alcohol and methane gas facilities along with essential equipment.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(c) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(1) The purchase of water stock or membership in an incorporated water users association.

(2) The acquisition of a water right through appropriation, agreement, permit, or decree.

(3) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(i) The value of the land without the water supply or right is only an incidental part of the total price, and

(ii) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(d) Refinance debts subject to the following:

(1) The debts were incurred for authorized SW loan purposes.

(2) All development or repair work conforms to FmHA standards or those standards will be met with the SW loan.

(3) The applicant's present creditors will not furnish credit at rates and terms the applicant meet.

(4) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(e) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(f) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service or the Soil Conservation Service only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the Farmers Home Administration (FmHA).

(g) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(h) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(1) Such a loan may be made on land with defective title owned by the applicant (see § 1943.69(b)) or on land in which the applicant owns an undivided interest providing:

(i) The amount of funds used on such land is limited to $25,000,

(ii) There is adequate security for the loan, and

(iii) The tract is not included in the appraisal report.

(2) Such a loan may be made on land leased by the applicant providing:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life.

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated.

(iii) There is adequate security for the loan.

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(b) The limitation found in § 1943.79(c) of this subpart is exceeded.

(c) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exbibit M to Subpart G of Part 1940 of this chapter.

§ 1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of

the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

§ 1943.69 Security.

(a) *General.* Each SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(iv) An SW loan is made just to finance construction of an alcohol or methane gas facility, a lien will be taken on the facility and sufficiant other property to adequately secure the loan, even though a majority of the products are used on the farm. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forefeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(4) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the county records that the applicant can give mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferrable separately from the land, provided:

(i) There is a market for the stock.

(ii) The purchase price is no greater than the price at which stock in the water company is normally sold.

(6) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(7) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1962 and Subpart B of Part 1941 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights of way, and other appurtenances that are considered part of the farm and usually

pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain convenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferee who will assume the SW debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 19____, created and established by a certain Lease dated _____, 19____, executed by _____ as lessor(s), recorded on _____, 19____, in Book _____, page _____ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional convenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(f) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(g) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same collateral can secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.70–1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or

mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of 1940 of this chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil Rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

(e) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must also provide evidence that they have received an ATF operating permit.

§ 1943.74 Special requirements.

(a) *Land development.* When possible recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chaptar (FmHA Instruction 426.1) when the loan is secured by real estate.

(2) See § 1943.73(a) of this subpart for information about mudslide and flood insurance.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

§ 1943.75 Options, planning and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real

property. Form FmHA 440–34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon FmHA making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security.

(2) Appraisals are not required if:

(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less; and

(ii) The loan approval official determines the loan is adequately secured without an appraisal; and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.

(3) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

(4) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security, the following items apply:

(i) Form FmHA 440–21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1924, Subpart A of this chapter.

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.78 [Reserved]

§ 1943.79 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured SW loans may be made simultaneously with other FmHA loans or to borrowers presently in debt on FmHA loans, only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an SW loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any FO, RL, OL and SW loans will not exceed $650,000.

(c) An insured SW loan may be made to a borrower with an outstanding guaranteed FO, SW or RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant or owed by anyone who will sign the note as cosigner does not exceed $300,000 at loan closing.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) All other requirements of the loan are met.

(d) A borrower may use the same collateral to secure two or more loans made, insured or guaranteed under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.81 [Reserved]

§ 1943.82 Loan docket processing.

(a) *Forms.* The following table is a guide to the forms needed and shows how they are distributed.

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400–1—Equal Opportunity Agreement	2	1-O	1-O	1-C
400–3—Notice to Contractors and Applicants	3		1-C	1-C
400–4—Assurance Agreement	2	2-O&C	1-O	1-C
400–6—Compliance Statement	3		1-C	1-C
403–1 [1]—Debt Adjustment Agreement	3(5)	1-O	1-O	
410–1—Application for FmHA Services	1(8)	1-O	1-O	
410–8—Applicant Reference Letter	1		1-O	
410–9—Statement Required by Privacy Act	2	2-O&C	1-C	1-O

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
410-10—Privacy Act Statement to References	2(9)		1-C	1-O
422-1 [1]—Appraisal Report—Farm Tract	1		1-C	
422-2 [1]—Supplemental Report—Irrigation, Drainage Levee, and Minerals	1		1-C	
422-10 [1]— Appraiser's Worksheet Farm Tracts (Study of Comparable Properties)	1		1-O	
424-1 [1]—Development Plan	2(2)	1-O	1-O	1-C
427-8 [1]—Agreement with Prior Lienholder	3(6)		1-O	1-C
431-1 [1]—Long-Time Farm and Home Plan	2	2-O&C	1-C	1-O
431-2—Farm and Home Plan	1(1)	1-O	1-O	1-C
431-4 [1]—Business Analysis—Nonagricultural Enterprise	2	1-O	1-C	1-O
1940-1—Request for Obligation of Funds	4(4)	2-O&C(8)	1-O	1-C
440-2—County Committee Certification or Recommendation	1		1-O	
440-9 [1]—Supplementary Payment Agreement	2	1-O	1-O	1-C
440-21 [1]—Appraisal of Chattel Property	1		1-O	
440-34 [1]—Option to Purchase Real Property	3(1)	2-O&C	1-O	1-C
440-45—Nondiscrimination Certificate (Individual Housing)	2	1-O	1-O	1-C
1940-21—Environmental Review	1		1-O	
1940-22 or Exhibit H, Subpart G, Part 1940				
443-12 [2]—Farm Ownership and Individual Soil and Water Fund Analysis	3		1-C	
1940-20 [1]—Request for Environmental Information	2		1-C	
492-19 [1]—Characteristics of Approved Applicants	3(7)		1-O	1-C
1924-14 [1]—Farmer Program Borrower Responsibilities	2	2	1-O	1-C
1922-11 [1]—Appraisal for Mineral Rights	1		1-O	

O—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.

Note:
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, 3 copies of plans and specifications will be required.
(4) Signed copy to creditor.
(5) Copy to lienholder.
(6) Copy to State Director.
(7) Records of applicant investigation, availability of other credit and so forth, which remain with the docket.
(8) Applicant must sign and date this form.
(9) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans; nonfarm enterprises; and copies of mortgages, contracts, and deeds.

(c) *Verification of veteran's preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible;

(ii) The County Committee certification has been properly completed and signed by at least two members of the Committee;

(iii) Funds are requested for authorized purposes;

(iv) The proposed loan is based upon a feasible plan or on other plans or documents acceptable to FmHA;

(v) The security is adequate;

(vi) Necessary supervision is planned; and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lien holders, when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940–1 and insert the title of the approval official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action

taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done. If an option is involved, the applicant will sign and send to the seller Form 440–35, "Acceptance of Option," or other suitable forms.

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000 the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, (available in any FmHA office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§§ 1943.86–1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in § 1943.69(b)(5) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440–25, "Financing Statement," or, when authorized, Form FmHA 440–A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the

applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443–16 is executed, appropriate notations will be made on Form FmHA 1905–1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940–17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The appropriate authorized officers will execute the note on behalf of the cooperative or cooperation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in county office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the county office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140–4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§§ 1943.89—1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamantion (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A, "Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration, Department of Agriculture," for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) A subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan except a new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land not presently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a new appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.95–1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

§§ 1943.101–1943.150 [Removed and reserved]

24. Part 1943 is amended to remove and reserve Subpart C (§§ 1943.101 through 1943.150).

PART 1944—HOUSING

25. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502. Rural Housing Loan Policies, Procedures, and Authorizations

26. Section 1944.23 is revised to read as follows:

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with Subpart S of Part 1951 of this chapter.

PART 1945—EMERGENCY

27. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

28. Section 1945.119 is amended by revising paragraph (a) to read as follows:

§ 1945.119 Consolidation, rescheduling, reamortization and deferral.

(a) *General requirements.* When the loan approval official determines that consolidation, rescheduling, reamortization, or deferral will assist in the orderly collection of the EE loan and any existing EE loans, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

* * * * *

29. Section 1945.149 is amended by revising paragraph (b) to read as follows:

§ 1945.149 Additional loans.

* * * * *

(b) All outstanding notes may be consolidatad for EE loans for operating purposes in accordance with Subpart S of Part 1951 of this chapter.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

30. Section 1945.154 is amended by revising paragraph (a)(4) to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) * * *

(4) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * *

31. Section 1945.168 is amended by revising paragraph (c) to read as follows:

§ 1945.168 Rates and terms.

* * * * *

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

* * * * *

32. Section 1945.169 is amended by revising paragraph (a)(3) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(a) * * *

(3) When insured and guaranteed loans are involved with the same borrower, there must be separate security for each of the insured and guaranteed loans only when the amount of loans exceeds the total value of the collateral. Different lien positions on real estate are considered separate collateral.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

33. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

34. Section 1951.7 is amended by removing paragraph (f), redesignating paragraphs (g) and (h) as (f) and (g) and revising paragraph (d)(1) to read as follows:

§ 1951.7 Accounts of borrowers.

* * * * *

(d) * * *

(1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with Subpart S of Part 1951 of this chapter.

* * * * *

35. Section 1951.8 is amended by revising paragraph (a) to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than

extra payments and refunds. Usually, regular payments are derived from farm income, as defined § 1962.4(j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17(d) of Subpart A of Part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the lock box facility(s) by direct payment borrowers are considered regular payments.

* * * * *

36. Section 1951.9 is amended by revising the introductory paragraph to read as follows:

§ 1951.9 Distribution of payments when a borrower owes more than one type of FHA loan.

"Distribution" means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2, "Farm and Home Plan") and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security."

* * * * *

37. Section 1951.10 is amended by revising the introductory paragraph to read as follows:

§ 1951.10 Application of payments on production-type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2) and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security."

* * * * *

38. Section 1951.25 is amended by revising paragraph (b)(5) to read as follows:

§ 1951.25 Review of limited resource FO and OL loans.

* * * * *

(b) * * *

(5) Borrowers who have received a deferral under Subpart S of this part will not have the interest rate increased on their limited resource loans during the deferral period.

* * * * *

§§ 1951.33–1951.49 [Removed and reserved]

39. Sections 1951.33 through 1951.49 have been removed and reserved.

Subpart A—[Amended]

40. In Part 1951, Subpart A is amended by removing the exhibit titles for Exhibits C–1 through G.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

41. Section 1951.314 is amended by revising paragraph (a)(8) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(8) When a decision has been made under Subpart S of this part to reamortize, reschedule or consolidate the farmer program loans of a borrower who also has an RH loan.

* * * * *

Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs

42. Section 1951.558 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

§ 1951.558 Decision on servicing actions.

* * * * *

(c) * * *

(1) * * *

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter

* * * * *

43. Subpart S of Part 1951, consisting of §§ 1951.901 through 1951.950, with exhibits are added to read as follows:

Subpart S—Farmer Program Account Servicing Policies

Sec.

Program (FP) Loans for Softwood Timber Production (ST) Loans

Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Set-Aside Easements)

Exhibit I—Farmer Programs Dwelling Retention

Exhibit J—Farmer Programs Leaseback/Buyback

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.901 Purpose.

This subpart describes the policies and procedures that Farmers Home Administration (FmHA) will use in servicing most Farmer Program loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), Recreation Loan (RL) and Rural Housing Loan for farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in Subparts L and N of this part. Cases involving graduation of borrowers to other sources of credit will be serviced as described in Subpart F of this part. Subpart S does not apply to Farmer Program Non-Program (NP) loans. Examples of loan servicing actions that FmHA may take are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reducing interest rate on the loan, write-down of debt, or a combination of these actions. Exhibit A provides the notice of availability of Primary and Preservation Loan Service programs for delinquent Farmer Program borrowers. Exhibit B provides a noncash credit for Farmer Program loan(s) when establishing recapture of debt written down. Attachment 1 of Exhibit A is the summary of Primary and Preservation Loan Service programs. Attachments 2 through 8 are the various notices and response forms borrowers will use after the initial notice is sent. Exhibit C provides for an equity recapture agreement. Exhibit D provides for a shared appreciation agreement when debt is written down. Exhibit E provides for notification of creditors of a meeting to adjust the borrower's debt. Exhibit F provides notification to the borrower that FmHA is offering to restructure. Exhibit G provides policies and procedures for a deferral, reamortization and reclassification of distressed Farmer Programs (FP) loan for Softwood Timber production (ST) loans under this subpart. Exhibit H provides policies and procedures for a Primary Loan Service (Farm Debt Restructure and Conservation Set-Aside Easement) under this subpart. Exhibit I provides policies and procedures for a Homestead Retention Program and Exhibit J provides policies and procedures for a Farmer Program Leaseback/Buyback program.

§ 1951.902 Policy.

Any farmer program borrower may request primary or preservation loan servicing programs described in Subpart S at any time. Borrowers must be unable to pay their debt as scheduled before FmHA will use primary or preservation loan servicing programs. The County Supervisor will use an FmHA approved computer program to assist in finding and documenting the loan servicing programs that will provide the best net recovery to the Government and keep the farmer on the farm. Servicing is a continuing process not a single event. It begins the day a farmer comes into the FmHA supervised credit program. Servicing has two objectives: To help the farmers manage credit so they can return to private sector credit sources, and to minimize costs to the Government of providing supervised credit. Borrower accounts must be managed with an overall objective of avoiding losses to the Government while at the same time, keeping the farmer in business. These tools are rescheduling and/or reamortization, lower interest rates, deferments and write-down of debt. To establish an effective servicing policy, it is necessary to look at a borrower's current loan with FmHA. This can be called Phase I. Our servicing objective is to keep the borrower in business, paying at regular rates and on regular terms. The servicing tool available to us to keep a borrower in Phase I is rescheduling and/or reamortization. These tools must be used *before* an account gets behind schedule. When it becomes evident that we cannot keep a borrower in business, paying regular rates and after having extended terms to the maximum extent allowable, the borrower moves into Phase II where we have more debt management tools available. These additional tools are lower interest rates and deferrals. The objective is still the same, avoid losses to the Government and keep the borrower farming. Depending upon the reasons the borrower entered Phase II, it is reasonable to expect, with proper servicing, recovery and return to Phase I. However, some borrowers may stay in Phase II as long as they are indebted to FmHA. When it becomes impossible to keep an account from being delinquent and such delinquency exists for 180 days, the borrower enters Phase III. The borrower receives notice of Availability of Loan Service Programs for Delinquent Farmer Program Borrowers. This phase begins the complicated process of determining the best net recovery for the Government while trying to keep the farmer on the farm. Our servicing tools are now expanded to include write-down of a borrower's debt. The procedure, at this point, requires an appraisal of all collateral and a sound and accurate mathematical calculation to determine whether or not the best net recovery to the Government exists in write-down of debt and continuation of the farming operation, or in liquidation of the collateral securing the FmHA debt. The debt must be written down to a level at which a feasible plan can be developed. The write-down can go down to an amount that will provide a return to the Government equal to net recovery from an involuntary liquidation. We will continue with the borrower if net recovery from loan payments on the debt after write-down equals or exceeds net recovery from liquidation. Every effort must be made to keep the farmer in business, using mediation if necessary and available, in an attempt to get other creditors to restructure their debt if that is what is needed to develop a feasible plan. When we make a decision on the borrower's loan servicing request or before we accelerate the loan account, the borrower must be notified of the adverse decision and the opportunity to appeal. When a borrower's debts cannot be restructured and liquidation is required, we can consider the borrower in Phase IV. The borrower still has a number of opportunities to continue to farm. The first is the right to purchase the collateral securing the FmHA debt at net recovery value. Both before and after acceleration the borrower can settle the debt by conveying the property, either by sale to another farmer or voluntary conveyance to FmHA, or through foreclosure. If FmHA takes the property into inventory, the farmer is now in Phase V and has the opportunity to use the preservation service programs and reacquire the property and continue farming under the leaseback/buyback program. The farmer may elect to use the homestead retention program rather than leaseback/buyback. In summary, the loan servicing policy is this:

(a) Use rescheduling and/or reamortization at regular interest rates to keep a borrower in Phase I if at all possible. If that is not possible, go to Phase II.

(b) In Phase II, use rescheduling and/or reamortization at lower interest rates

and use deferral (including softwood timber loans and conservation easement set-aside) if necessary to keep a borrower from becoming delinquent. When a borrower is 180 days delinquent, send the borrower Exhibit A with Attachments 1 and 2 of this subpart.

(c) In Phase III, you calculate whether or not the best net recovery to the Government is from keeping the farmer on the farm or through liquidation. At this point, the borrower is considered for a debt writedown. This process will include mediation if an approved State mediation program is available or an effort by FmHA to get under-secured creditors together when other creditor's debt is the reason a feasible plan cannot be developed. If a feasible plan cannot be developed, the borrower has the opportunity to purchase the property at the net recovery value.

(d) When all or any combination of these servicing tools show that the best net recovery to the Government is from keeping the farmer on the farm, the debts will be restructured.

(e) When all or any combination of these servicing tools have been fully and carefully considered and it is determined that the best net recovery to the Government is in liquidation, the borrower will move into Phase IV which is the liquidation process. Before acceleration, the borrower will have the opportunity to appeal all FmHA adverse decisions.

(f) Both before and after acceleration, the debt may be settled by conveyance of the property to another farmer or to FmHA or, by foreclosure. The normal debt settlement procedures will be followed.

(g) After liquidation, the borrower moves into Phase V. The last phase of their loan with FmHA is when the property securing their loans passes into our inventory. In this phase, we must offer the preservation loan service programs. Once again, we must try to keep the farmer on the farm. This will be done with the leaseback/buyback program for the farm or through the homestead retention program for the home and 10 acres. In either situation, the former borrower must meet the eligibility requirements which are set forth in the regulations.

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* County Supervisors will make full use of the County Office Management System to track and manage the Farmer Program primary and preservation loan servicing programs.

(b) *Authorities.* All loan servicing decisions will be made by the County Supervisor except write-down of a borrower's debt and certain rescheduling and reamortization actions. The State Directors only are authorized to write-down a borrower's debt. Requests for authority to write-down a borrowers' debts will be processed in accordance with § 1951.911(c)(1) of this subpart. FmHA County Supervisors are authorized to consolidate and reschedule loans one time. If subsequent reschedulings are necessary the reschedulings must be approved at the next higher level of FmHA supervision. The approval official on subsequent reschedulings will only approve the rescheduling if the borrower is making all interest payments and is reducing the principal as much as possible. FmHA County Supervisors are authorized to reamortize loans and debts owed under assumption agreements one time. If subsequent reamortizations become necessary, the reamortization must be approved at the next higher level of FmHA supervision. The approval official of the subsequent reamortization will only approve the reamortization if the borrower has been making all interest payments and is reducing the principal as much as possible.

§§ 1951.904–1951.905 [Reserved]

§ 1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has outstanding obligations to the Farmers Home Administration (FmHA) under any Farmer Program loans, without regard to whether the loan has been accelerated, but does not include any such debtor all of whose loans and accounts have been foreclosed or liquidated, voluntarily or otherwise.

Delinquent borrower. A borrower who has a payment due on a loan which is unpaid for 30 or more calendar days.

Farm plan. Form FmHA 431–2, "Farm and Home Plan," or other plans or documents acceptable to FmHA that will accurately reflect the production and financial management of the farming operation for one production cycle.

Feasible plan. A feasible plan is a plan that must indicate that the anticipated farm and non-farm cash income equals or exceeds all the anticipated cash outflow for a planned period. A feasible plan must show that a borrower will be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm production cycle.

(b) Meet scheduled payments on all open accounts and on all other debts some of which may include delinquent taxes.

(c) Provide a 5 percent reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the dependent members of the family which reside in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants who indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds on which it has a lien.

Foreclosed. The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

Liquidated. The completed act of voluntarily selling security property to end the loan when further assistance will not be given, or involuntarily as the result of a completed civil suit against a borrower to recover collateral or against third parties to recover collateral or its value or recovered amounts owed to FmHA; or claims filed in bankruptcy or similar proceedings or in probate or administrative proceedings to satisfy the loan.

Loan service program. Loan service program means a primary loan service program or a preservation loan service program for farmer program borrowers.

Nonprogram loan (NP). A NP loan results when loan(s) are made to ineligible applicants and/or to transferees in connection with loan assumptions and sale of inventory properties.

Preservation loan service program. Preservation loan service program means:

(a) Homestead retention as described in Exhibit I of this subpart, and

(b) A leaseback or buyback of farmland as described in Exhibit J of this subpart.

Primary loan service program. Primary loan service program means:

(a) Loan consolidation, rescheduling, or reamortization;

(b) Interest rate reduction, including use of the limited resource program;

(c) Loan restructuring, including deferral, set-aside, or writing down of the principal or accumulated interest charges, or both, of the loan; or

(d) Any combination of actions listed in subparagraphs (d)(1), (2), and (3) of this section.

(1) *Consolidate.* Consolidate means to combine and reschedule the rates and terms of two or more of the same type of OL or EO loans, EE operating-type loans or EM loans.

(2) *Deferral.* Deferral is an approved delay in making regularly scheduled payments.

(3) *Limited Resource Program.* The limited resource program is a reduction of interest rates for both operating loans (OL) and farm ownership (FO).

(4) *Reamortization.* Reamortization means to rearrange the installment payments of a real estate loan and may include changing the interest rate and terms of the loan made for Subtitle A purposes.

(5) *Rescheduled.* Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

(6) *Write-down.* For purposes of this part, write-down is reducing a borrower's debt in an amount that will result in a feasible plan of operation. Such write-down will not cause the borrower's debt to be reduced to an amount less than net recovery value of an involuntary liquidation.

§ 1951.907 Notice of Loan Service Programs.

(a) *Notification of Farmer Program borrowers whose FmHA loan accounts were accelerated between November 1, 1985, and May 7, 1987, who requested debt restructure and the release of normal farm income.* Farmer program borrowers who request debt restructure and the release of normal farm income resulting from an FmHA notice of such loan servicing options will be sent Exhibit A with Attachments 1 and 2. Exhibit A with Attachment 1 and 2 will be sent by certified mail, return receipt requested. Exhibit A with Attachments 1 and 2 will be sent to the borrower's attorney if the borrower has filed bankruptcy. Borrowers accelerated between this period who did not request release of normal farm income must also be sent these notices.

(b) *Notification of Farmer Program borrowers whose FmHA loan accounts were accelerated between November 1, 1985, and May 7, 1987, who did not request debt restructure.* Farmer program borrowers who did not request debt restructure within 45 days after receiving an FmHA notice of such servicing options will be provided Attachments 3 and 4, "Notice of Intent to Continue With Acceleration of Your Farmers Home Administration Account and Notice of your Rights," of Exhibit A by certified mail, return receipt requested. Attachments 3A and 4 of Exhibit A will be sent to the borrower's attorney if the borrower has filed bankruptcy. If the entire payment is not received within 30 days or a voluntary conveyance is not requested, the account will be liquidated in accordance with § 1955.15(e) of Subpart A of Part 1955 of this chapter.

(c) *Notification of Farmer Program borrowers whose FmHA loan accounts were accelerated before November 1, 1985, who have not been foreclosed or liquidated.* Farmer program borrowers whose FmHA loan accounts were accelerated before November 1, 1985, but not foreclosed or liquidated will be provided with Exhibit A and Attachments 1 and 2 of Exhibit A by certified mail, return receipt requested. If these borrowers do not request servicing within 45 days, they will be sent Attachments 3 and 4 of Exhibit A by certified mail, return receipt requested. If the entire payment is not received within 30 days or a voluntary conveyance is not requested, the account will be liquidated in accordance with § 1955.15(e) of Subpart A of Part 1955 of this chapter. Attachments 3A and 4 of Exhibit A will be sent to the borrower's attorney if the borrower has filed bankruptcy.

(d) *Notification of Borrowers less than 180 days delinquent.* The County Supervisors will contact a delinquent farmer program borrower within 30 days after the borrower's account becomes delinquent and schedule a meeting within 10 days to develop a plan to correct the delinquency. A record of this contract will be placed in the borrower's loan file. If the borrower cannot develop a plan using all of the borrower's financial resources which would eliminate the delinquency within 60 days, the County Supervisor will use the FmHA approved computer program, Debt Loan Restructuring System (DALR$) to consider the primary loan service program authorized by § 1951.910 (a) through (e) of this subpart in accordance with the order of processing established by § 1951.902 (a) and (b) of this subpart. If the borrower requests loan servicing at this time, the County Supervisor should give the borrower Attachment 1 (only) of Exhibit A of this subpart. The County Office case file will be documented to provide a record that the borrower was provided a copy of Attachment 1 of Exhibit A of this subpart.

(e) *Notification of Borrowers 180 days delinquent.* Farmer Program borrowers who are 180 days delinquent, and in financial distress which exists because a borrower cannot develop a feasible plan by using rescheduling, reamortization, limited resource rates or deferral at maximum terms, will be sent Exhibit A with Attachments 1 and 2, "Notice of the Availability of Loan Service Programs," by *certified mail,* return receipt requested. Borrowers who are 180 days delinquent and have also violated their loan agreements with FmHA will also be sent this notice unless a prior lienholder or junior lienholder is foreclosing. These cases should be handled in accordance with paragraph (f) of the section. Exhibit A, with Attachments 1 and 2, will be sent to the borrower's attorney if the borrower has filed bankruptcy. In addition to the requirements set forth above, FmHA County Supervisors will provide Exhibit A with Attachments 1 and 2 of this subpart to all Farmer Program borrowers:

(1) At the time an application is made for participation in a FmHA loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section.

(2) On written request of any Farmer Program borrower, whether delinquent or not, and

(3) Before the earliest of:

(i) Initiating any FmHA liquidation action,

(ii) Requesting a voluntary conveyance of security property to FmHA, or requesting that the borrower sell security property,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(f) *Notification of Borrowers in Non-Monetary Default or for delinquent borrowers when a prior or junior lienholder is foreclosing.* Farmer Program borrowers who are in non-monetary default will be sent Attachments 1, 5 and 6 of Exhibit A. If any problems are encountered, OGC

may be contacted for advice. If a case is in the hands of the U.S. Attorney, no loan servicing action will be taken without the U.S. Attorney's concurrence as set forth in § 1962.40 of Subpart A of Part 1962 or § 1965.26 of Subpart A of Part 1965 of this chapter, as appropriate. Attachments l, 5 and 6 of Exhibit A will be sent by certified mail, return receipt requested. Attachments l, 5 and 6 of Exhibit A will be sent to the borrower's attorney if the borrower has filed bankruptcy. Any servicing request will be processed as indicated in § 1951.908 of this subpart. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final FmHA decision, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter.

(g) *Request for primary or preservation loan service programs.* Farmer Program borrowers who are sent Exhibit A, with Attacbments l, 2, 5 and 6 must, within 45 days after receiving this exhibit and attachments, request consideration for primary and/or preservation loan service programs by completing Attachment 2 or Attachment 6 and returning it with the completed required forms to the FmHA County Supervisor. FmHA will proceed with liquidation action if the borrower's request (Attachment 2 or Attachment 6) is not received within 45 days or the borrower is sent Attachments 5 and 6 and does not request a meeting within 15 days or a hearing within 30 days.

(1) An application for loan service programs will include the following forms (available in FmHA County Office):

(i) Form FmHA 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.

(ii) Form FmHA 410–8, "Applicant Reference Letter."

(iii) Form FmHA 410–9, "Statement Required by the Privacy Act."

(iv) Form FmHA 431–2, "Farm and Home Plan," or any other plan acceptable to FmHA that sets forth a feasible plan of operation.

(v) Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

(vi) Form(s) FmHA 1910–5, "Request for Verification of Employment."

(vii) Form FmHA 1924–1, "Development Plan," if development is planned. Complete plans, specifications and cost estimates must be attached to Form FmHA 1924–1. When development is required to comply with "Highly Erodible and Wetland" requirements, estimates of costs and the conservation plan developed by SCS will be used to satisfy this requirement.

(viii) Form AD–1026, "Highly Erodible Land and Wetland Certification," and

(ix) Form SCS CPA–26, "Highly Erodible Land and Wetland Determination," if not previously on file with FmHA for the farm operation(s).

(2) The FmHA County Supervisor will provide the borrower with copies of the above forms and forms manual insert (FMI) with each form when Exhibit A is forwarded to farmer program borrowers. When requested by the borrower, copies of FmHA Instructions will be provided within 10 days of the request. The borrower's County Office case file will be documented to provide a record that the FmHA Instructions were sent.

(h) *Non-Accelerated Borrowers Who Do Not Respond to the Notice.* Borrowers who were sent Exhibit A and Attachments l and 2 (borrowers who were 180 days delinquent but not previously accelerated will be sent Attachments 9 and 10 of Exhibit A). The account will not be accelerated until any appeal has been concluded. If no meeting or appeal is requested, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter.

§ 1951.908 Processing primary loan service program requests.

(a) *FmHA Responsibilities.* Within 60 days after receipt of Attachment 2 and the completed forms attached to Exhibit A, the County Supervisor will consider all or any combination of primary servicing options in this subpart. The order of processing the various options will be as set forth in § 1951.902 of this subpart. The County Supervisor should use the FmHA approved computer program, Debt Loan Restructuring System (DALR$), to assist in finding the loan servicing programs best suited for a borrower's farming operation.

(b) *Adverse determination.* If the County Supervisor or approval official determines that the borrower is not eligible for any of the primary loan service and preservation loan service programs, if applicable, the borrower will be given an opportunity to appeal as provided in Subpart B of Part 1900 of this chapter. However, the meeting and/or hearing will not take place until the County Supervisor or approval official determines the borrower's eligibility for the primary loan service programs of this subpart. No acceleration or foreclosure will occur until the appeal process has been completed.

§ 1951.909 Eligibility.

(a) *Requirements.* The County Supervisor or approval official authorized by § 1951.103(b) of this subpart must find that the borrower who has applied for primary or preservation and loan servicing meets *all* of the following requirements:

(1) The delinquency does exist and is due to circumstances beyond the control of the borrower due to:

(i) Reduction in farm income and/or from a nonfarm job due to unemployment or underemployment of the borrower/operator or spouse caused by circumstances beyond the borrower's control, or

(ii) Reduction in income due to medically-certified illness, injury or death of an individual borrower or stockholder, member or partner, who operates the farm, or

(iii) Reduction in income due to a declared natural disaster, an outbreak of uncontrollable disease, hazardous waste, and/or uncontrollable insect damage which caused severe loss of agricultural production.

(iv) Economic factors that are widespread and not limited to an individual case such as high interest rates or low market prices for agricultural commodities as compared to production costs that reduced repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements and promises made with FmHA in that the borrower:

(i) Before experiencing the hardship, had paid, when due, all real estate taxes and property insurance premiums, and otherwise has complied with the other conditions of the loan documents;

(ii) Applied recommended and generally recognized successful production and financial management practices;

(iii) Properly maintained (similar quantity and quality) and accounted for debt-related security property; and

(iv) Had disposed of all nonessential assets in accordance with agreements made with FmHA, and had applied the proceeds to the FmHA loan account(s) or paid other creditors in accordance with lien priorities or other approved agreements;

(b) *FmHA's determinations.* The County Supervisor must determine that the borrower will be able to:

(1) Meet the necessary family living and farm operating expenses; and

(2) Service all debts, including those of the loans restructured; and

(3) Except for the establishment of a conservation easement under Exhibit H of this subpart, the loan, if restructured,

must result in a net recovery to the Federal Government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Federal Government from an involuntary liquidation or foreclosure on the property securing the loan.

§ 1951.910 Primary loan service programs—additional requirements.

Any farmer program borrower may request primary or preservation loan servicing programs described in this subpart at any time. However, borrowers must show that they are not able to pay their debt as scheduled before FmHA will approve primary or preservation loan servicing programs.

(a) *Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and reschedule *existing* loans, providing the borrower agrees to such actions. Farmer Program Non-program loan debtors are not eligible to receive any program benefits including consolidation or rescheduling under this subpart. (See § 1965.34 of Subpart A of Part 1965 of this chapter.) When the County Supervisor determines that consolidation or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action after the borrower is 30 days delinquent and before the borrower is 180 days delinquent, provided all of the following conditions exist:

(1) The borrower meets the eligibility requirements in § 1951.909 of this subpart;

(2) Such action is not taken to circumvent FmHA's graduation requirements;

(3) The borrower's account is not being serviced by Office of the General Counsel (OGC) or the U.S. Attorney and there are no FmHA plans to have the account serviced by either of these offices in the near future;

(4) A feasible plan cannot be developed with the existing repayment schedule but can be developed with revised repayment terms. Only a sufficient number of notes will be rescheduled to permit the development of a feasible plan of operation;

(5) The borrower will offer for sale any assets determined to be non-essential to the farming operation. If unable to sell these non-essential assets then such assets must be pledged as security for existing FmHA loans. All other assets will be pledged as security for the FmHA loans that can be pledged subject to a valid lien. A lien will not be taken on subsistence livestock, household goods, small tools and small equipment such as hand tools, power lawn mowers, and other items of like type not needed for security purposes. Security for restructuring of FmHA loans will include, but not be limited to the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues, royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(6) The borrower will comply with the highly erodible land and wetland conservation provisions of Exhibit M of Subpart G of Part 1940 of this chapter.

(7) Any loans secured by real estate will not be consolidated or rescheduled, unless the County Supervisor reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor should ask the Office of the General Counsel (OGC) for an opinion as to what lien position the Government will have if a new note is taken.

(8) Only loans of the same type will be consolidated.

(9) The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of consolidation and rescheduling (the date the new note is signed by the borrower).

(10) EM actual loss and SL loans will *not* be consolidated.

(11) The County Supervisor will not consolidate a loan serviced under Subpart L of this part with another loan.

(12) Loans that have been deferred under this section will not be consolidated or rescheduled during the deferral period.

(13) If loans with a debt set-aside are to be rescheduled, the debt set-aside must be cancelled. If the set-aside portion of the loan is not cancelled, then only the non-set-aside portion will be rescheduled.

(14) Balloon payments for loans will not be used unless there will be adequate real estate, machinery, equipment or foundation livestock available to adequately secure the balloon payment when the balloon payment is due. The determination that adequate security will be available when the balloon payment is due will be documented in the borrower's County Office case file.

(15) *Terms of consolidated and rescheduled loans are as follows:*

(i) Consolidated and rescheduled loans will be repaid according to the borrower's repayment ability, or 15 years from the date of the consolidation and/or rescheduling action whichever is the lesser period of time, except:

(ii) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the note is signed).

(iii) Repayment of EE loans may not exceed 20 years from the date of the original note.

(16) *Interest rates of consolidated and/or rescheduled loans will be as follows:*

(i) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the limited resource OL loan rate.

(ii) *Limited Resource Rate.* At the time of the consolidation and/or rescheduling action, OL loans may be assigned a limited resource rate if: The borrower meets the requirements for the limited resource interest rate, a feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section, and a feasible repayment plan can be developed with the limited resource interest rate.

(b) *Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.* This subsection explains how the FmHA County Supervisor can reamortize existing loans. Farmer program non-program loan debtors are not eligible to receive any program benefits including reamortization (see § 1965.34 of Subpart A of Part 1965 of this chapter). When the County Supervisor determines that a reamortization action will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(1) The borrower meets the eligibility requirements of § 1951.909 of this subpart;

(2) Such action is not taken to circumvent FmHA's graduation requirements;

(3) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney, and there are no plans to have

the account serviced by either of these offices in the foreseeable future;

(4) A feasible plan for the borrower cannot be developed with the existing repayment schedule, but a feasible plan can be developed with revised repayment terms. Only a sufficient number of notes will be reamortized to permit the development of a feasible plan of operation;

(5) The borrower will sell any assets determined by FmHA and the borrower to be non-essential to the farming operation. Such nonessential assets, if unable to be sold, must be pledged as security for existing FmHA loans. All other assets will be pledged as security for the FmHA loans that can be pledged subject to a valid lien. A lien will not be taken on subsistence, livestock, household goods, small tools and small equipment such as hand tools, power lawn mowers, and other items of like type not needed for security purposes. Security for restructuring of FmHA loans will include, but not be limited to the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(6) The borrower will comply with the highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(7) Loans that have been deferred in this subpart will not be reamortized during the deferral period.

(8) If loans with debt set-aside provisions are to be reamortized, the debt set-aside will be cancelled. If the set aside portion of the loan(s) is not cancelled, then only the non-set-aside portion will be reamortized.

(9) *Terms of repayment of reamortized loans are as follows:*

(i) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(ii) The FmHA's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued by State Directors to provide instructions on the effect that a change in the final due date has on security instruments and the action necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(iii) The amount of accrued interest more than 90 days overdue and any advances charged to the borrower's account will be added to the principal at the time of the reamortization action (the date the note is signed). If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form FmHA 1940–17 is processed and the next January 1.

(10) *Interest.* (i) The interest rate will be the current interest rate in effect on the date of reamortization (the date the note is signed), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO loan rate or the original loan note rate; whichever is less.

(ii) At the time of the reamortization, an FO loan may be changed to a limited resource interest rate if: The borrower meets the requirements for a limited resource interest rate, a feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and a feasible plan can be developed with the limited resource interest rate.

(c) *Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF and EE loans*—(1) *Loan deferrals.* Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization actions, in accordance with this subpart will not provide a feasible plan needed to service the debt, operate the farm and provide family living expenses.

(2) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(i) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that the borrowers will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling or reamortization can be resumed at the end of the deferral period.

(ii) Continuation of loan payments as presently scheduled without change will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations and cooperatives do not have family living expenses), pay normal or farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) The borrower will offer for sale any assets determined to be non-essential to the farming operation. If unable to sell these non-essential assets then such assets must be pledged as security for existing FmHA loans. All other assets will be pledged as security for the FmHA loans that can be pledged subject to a valid lien. A lien will not be taken on subsistence, livestock, household goods, small tools and small equipment such as hand tools, power lawn mowers, and other items of like type not needed for security purposes. Security for restructuring of FmHA loans will include, but not be limited to the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties. In cases involving either a recapture or a shared appreciation agreement, the entire FmHA debt will be further secured by a lien on all real estate property owned by any individual or entity liable for the FmHA debt.

(3) *FmHA's determinations.* The FmHA approval official must:

(i) Determine that the borrower meets the eligibility requirements of § 1951.909 of this subpart;

(ii) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(iii) If a feasible plan cannot be developed after consideration of a

deferral, the County Supervisor will inform the borrower about the reclassified Softwood Timber (ST) loan program authorized by Exhibit G of this subpart and the conservation set-aside easement program authorized by Exhibit H of this subpart. If the borrower requests consideration of a ST loan or conservation easement set-aside, the County Supervisor will help the borrower develop a plan to determine if a feasible operation can be developed utilizing these programs. The discussion will be documented in the borrower's case file.

(iv) If the borrower is not eligible for a deferral, the borrower will be informed of the decision and the calculations shown on the computer printout by the Debt Loan Restructuring System (DALR$) after the County Supervisor has considered the borrower for all the primary loan servicing programs in accordance with § 1951.911(c) of this subpart.

(4) *FmHA loan deferral considerations.* (i) Sufficient amounts must be considered for deferral to permit the borrower to have a feasible plan to pay necessary debts and essential farm operating and family living expenses during a typical year of the deferral period. This may require deferring all FmHA debts for a period of time.

(ii) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments (beyond those needed to allow the borrower to repay necessary debts and essential farm operating expenses and family living expenses) will not be used to create additional cash reserve for capital purchases (such purchases are not considered operating expenses).

(iii) A typical year during the deferral period is a year which most closely represents the borrower's operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral.

(iv) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash flow during the entire deferral period, a deferral should not be granted. In such a case a rescheduling or reamortization with an unequal payment schedule should be considered to provide a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(v) The borrower must submit feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals should be realistic and supported by the borrower's reliable records.

(5) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan servicing actions. If it is necessary to defer additional loans, such action will be taken if the deferral will result in a greater net recovery to the Government than debt write-down. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this sub-section are met.

(6) *Special debt set-aside loans.* If a borrower has requested a deferral for a loan that has a portion of the debt set-aside, the set-aside will be cancelled at the time the deferral is granted. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who requests a deferral of a set-aside loan must first agree in writing to the cancellation of the set-aside if the deferral is approved.

(7) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be the rate of interest on the original loan(s) or the current rate for loans of the same type as established in FmHA Instruction 440.1 (available in any FmHA office), whichever is lower.

(i) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. Accrued interest more than 90 days overdue and authorized recoverable cost items will be added to the principal as of the date the new note(s) is signed. All FmHA loans must be current on the date the new note is signed. The County Supervisor will determine the amount of interest and principal owed on the date the new note(s) will be signed. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral and will not be changed during the deferral period unless the conditions of § 1951.910(c)(8) of this subpart are met.

(ii) The Finance Office will be notified of the deferral by the County Office by completing Forms FmHA 1965–22 and 1965–23. The FmHA Finance Office will remove the borrower's name from the delinquency report.

(iii) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter. The Finance Office will provide the County Office with a quarterly status report for each borrower who has received a deferral.

(iv) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment on the FmHA debt.

(v) The County Supervisor must notify the Finance Office of any cancellation of a deferral.

(8) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by § 1924.60 of this chapter, the County Supervisor will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will ask (in writing) the borrower to sign a Form FmHA 440–9, "Supplementary Payment Agreement," within 30 days of the date of the written request. If the borrower does not sign a Form FmHA 440–9 within the required time, and/or does not honor the terms and conditions of the repayment agreement, such actions will be considered abuse of the program and the borrower's account will be liquidated. The borrower will not be notified of any primary loan service programs of this subpart, provided the borrower previously received the Exhibit A and Attachments 1 and 2 of this subpart. This decision is appealable.

(d) *Special debt set-aside provision for a portion of the insured loan indebtedness of farmer program borrowers (NOT AVAILABLE AFTER SEPTEMBER 30, 1985)*—(1) *Period of time available.* The authorities contained in this section were available to financially stressed FmHA farmer program borrowers (OL, FO, EO, SW, EE, EM, RL (but not association recreation loans) and/or *only* those Rural Housing (RH) loans which were made for farm service buildings) until September 30, 1985. The County Supervisor will maintain a record of approved special set-aside amounts, in

accordance with FmHA Instruction 1905–A, available in any FmHA office.

(2) *Agency Finance Office Actions are as follows:*

(i) The FmHA Finance Office has established the set-aside portion of the debt as a separate account, in accordance with Form FmHA 1951–6.

(ii) The Finance Office will provide each County Office with a quarterly status report for each borrower receiving a set-aside.

(iii) Six months prior to the end of the set-aside period, the Finance Office will notify the County Supervisor of the amount of the borrower's upcoming installment(s) due date.

(iv) The interest rate on the set-aside portion of the note, after the set-aside period has passed, will be the same rate as on the non-set-aside portion of the note.

(3) *Cancellation of special set-aside agreements may take place under the following circumstances:*

(i) Borrowers who incur debt or purchase items not planned for in the Farm and Home Plan without the County Supervisor's approval, violate any of the covenants contained in any security instruments, loan agreements or cease farming will have their set-aside cancelled by the County Supervisor.

(ii) The County Supervisor will send written notice by certified mail, return receipt requested, to the borrower of FmHA's intention to cancel the set-aside. This notification will set forth the specific facts requiring cancellation and inform the borrower of appeal rights in accordance with Subpart B of Part 1900 of this chapter. If the borrower does not appeal or if the FmHA decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation date of the set-aside. The actual cancellation action is not appealable.

(iii) The County Office will be responsible for notifying the Finance Office of the cancellation action using a properly executed Form FmHA 1951–6 prepared according to the FMI.

(4) *Requirements for servicing set-aside loans are as follows:*

(i) Loan notes which are rescheduled and contain set-aside provisions in accordance with this section will not be consolidated during the set-aside period.

(ii) Loan notes which are rescheduled and do not contain set-aside provisions in accordance with this section may be rescheduled or reamortized in accordance with this subpart during the set-aside period. The rescheduling or reamortization action may be at the limited resource rate, if applicable. The set-aside amount will stay in effect, but will not be increased or extended beyond the original five-year term. The County Office will forward to the Finance Office Form FmHA 1951–4 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked in red "Interest Change in Set-Aside."

(5) *Deficiency judgments.* Interest will begin to accrue (at the higher of the current interest rate or the judgment interest rate) on the set-aside portion if FmHA receives a deficiency judgment.

(e) *Write-down of FmHA loans.* Priority consideration will be given to writing down farmer program loans to avoid losses to the Government whenever such write-down will facilitate keeping the farmer on the farm or ranching operation. The following conditions shall be met for writedown of FmHA loans.

(1) No other primary loan service program nor any combination thereof will produce a feasible plan that will allow the borrower to continue the operation;

(2) A feasible plan must be developed that will result in a net recovery to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(3) The borrower must present a preliminary plan that demonstrates that the borrower will be able to:

(i) Meet the necessary family living and farm operating expenses, and

(ii) Service all existing and foreseeable debts, and

(iii) Comply with the highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter, and

(iv) Borrower must agree to a shared appreciation agreement if the loan(s) is secured by real estate.

(4) The borrower should participate in a meeting with creditors if it is necessary that the borrower's creditors make some debt adjustments that will permit the development of a feasible plan. This meeting may be in a Certified State Agricultural Mediation program or a meeting of creditors arranged by FmHA. Failure by the borrowers to participate in meetings with FmHA and other creditors will be noted in the case file. If the borrower is found ineligible for a write-down in accordance with § 1951.911(c) of this subpart, failure to participate will be listed as a reason for the intended adverse action on Attachment 7 of Exhibit A of this subpart.

(5) *Rates and Terms.* Remaining debt after restructuring will be rescheduled/reamortized, or deferred in accordance with paragraphs (a), (b), and (c) of this section.

§ 1951.911 Processing write-down requests.

(a) *Determining value of net recovery from involuntary liquidation.* Within 60 days of the County Supervisor's receipt of a complete application which requests primary and preservation loan service programs the County Supervisor must make the calculations required in this section.

(1) The County Supervisor will determine the net recovery to the Federal Government equivalent to involuntary liquidation of the collateral securing the FmHA debt. The County Supervisor will determine the current market value of the collateral including tangible and intangible property in existence and of record in accordance with FmHA Instruction 422.1 for real estate property, and on Form FmHA 440–21, "Appraisal of Chattel Property" (available in any FmHA office). Collateral may include real estate, chattels and tangible or intangible property. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible or intangible property may include accounts receivable, Government Payments and PIK Certificates. From the current market value of the collateral, the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral property;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (to be published in Exhibit B of FmHA 440.1 (available in any FmHA office). Interest costs will be calculated on the current market value of the property for a holding period established by each State average holding time for suitable inventory farm property as of July 1 each year;

(iii) Adjust the current market value for increases or decreases in value of the property for the holding period specified in (ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising; and

(v) Other administrative and attorney's expenses.

(2) *Determining cost of involuntary liquidation of collateral for farm loans.* State Directors will analyze the costs of involuntary liquidation within the geographic areas of their jurisdiction and issue a State supplement of estimated costs to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. State

Directors will consult with State Directors of adjoining States, other lenders, real estate agents, auctioners, and others in the community to gather and analyze the information specified in this subpart.

(b) *Determining net recovery value resulting from Primary servicing actions.* The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. County Supervisors will use a discount rate based on 90-day Treasury Bills. The National Office will publish the 90-day Treasury bill rate in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(c) *Notification requirements.* (1) If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral securing the debt, the County Supervisor will forward the borrower's Farm and Home Plan, the original printout of the DALR$ calculations, along with a statement on the printout signed by the County Supervisor certifying that the borrower meets all requirements for debt restructuring with the write-down amount specified on the printout sent to the State Director. The State Director's authorization to the County Supervisor to proceed with the write-down will be evidenced by the State Director's signature affixed to the original copy of the DALR$ printout returned to the County Supervisor. Within 60 days after receiving a complete application the County Supervisor will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F, "Notifications of Approval Offer to Debt Restructure." Exhibit F will inform the borrower(s) of FmHA's offer to restructure the debt. If the borrower accepts the offer, the County Supervisor will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance of FmHA's offer to restructure the debt.

(2) If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all primary loan servicing, softwood timber, or conservation easement programs, the County Supervisor will take the following actions within 15 days from the date of the determination that the borrower's debts cannot be restructured as requested.

(i) When the borrower has creditors other than FmHA, and a feasible plan of operation cannot be developed after consideration of primary loan servicing, softwood timber and conservation easement programs, the borrower will be sent Exhibit E, "Notification of Request for Mediation or Meeting of Creditors" of this subpart, certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to Exhibit E will inform the borrower that FmHA is requesting mediation or a meeting will be scheduled by FmHA with the borrower's creditors in our effort to obtain a debt adjustment agreement with creditors which will permit the development of a feasible plan of operation.

(ii) If mediation or the voluntary meeting of creditors is not successful, the borrower will be informed of appeal rights by sending Attachments 7 and 8 of Exhibit A of this subpart, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to Attachment 7 of Exhibit A. Attachment 7 of Exhibit A will inform the borrower of further rights. As stated in Attachment 7, the borrower will have 45 days after the receipt of the notification of ineligibility to purchase the security property at net recovery value. The purchase must be made with cash. FmHA will not provide credit for this transaction. Prior to the purchase of the security property, the borrower must, as a condition of the sale, enter into a written agreement by executing Exhibit C, "Equity Recapture Agreement," of this subpart. The County Supervisor will then proceed as indicated in § 1951.911(f) of this subpart.

(d) *Administrative appeals.* No foreclosure or other similar actions will be taken to liquidate by FmHA until the following has occurred:

(1) The borrower has been given the opportunity to appeal such decision in accordance with Subpart B of Part 1900 of this chapter;

(2) If the borrower appeals the decision to deny a primary loan service program request, the 45-day period for the borrower to pay FmHA the net recovery value of the collateral will start on the day the borrower receives the final appeal or review decision if the final decision upholds the initial decision. Such decision letter is to be sent by the hearing or review officer, certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office by the hearing or review officer

(3) If the borrower appeals the current market appraisal completed by FmHA, the borrower may obtain an appraisal by an independent appraiser selected from a list provided by FmHA in accordance with § 1900.57(l) of Subpart B of Part 1900 of this chapter. The cost of the appraisal must be paid by the borrower. The independent appraisal will be considered by the hearing officer.

(4) If the Administrative appeal process results in a determination that the borrower is eligible for debt write-down, the County Supervisor will write-down the loan in accordance with this subpart, taking into consideration the write-down recommendations, if any, of the appeals officer.

(5) If the administrative appeal process results in a determination that the borrower is ineligible for debt write-down, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under § 1941.14 of Subpart A of Part 1941 of this chapter.

(e) *Processing of write-down agreements.* Borrowers *who are eligible* for primary loan service programs with write-down will have their loans rescheduled or reamortized in accordance with this subpart. Sufficient loan(s) will be rescheduled or reamortized at the lowest authorized interest rate and best terms to permit a feasible plan to be developed. If a loan(s) deferral action is approved, all loans being deferred will be rescheduled, reamortized or consolidated. All loan servicing actions approved in connection with the write-down must take place simultaneously. The borrower and County Supervisor will complete Exhibit D to this subpart, "Shared Appreciation Agreement," (available in any FmHA office). Exhibit D provides for recapture as specified in § 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the write-down. Priority will be given to writing down unsecured note(s) or note(s) having security of the least value and then to the note(s) having the highest interest rate(s).

(1) A separate Form FmHA 1940–17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA 1940–17 will be completed, signed, and distributed as provided in the FMI and Exhibit M of Subpart G of Part 1940 of this chapter.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940–17 and on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(4) A Form FmHA 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA Finance Office to return the original note so it is in the County Office *before* Form FmHA 1940–17 is processed.

(5) The County Supervisor will complete and send to the Finance Office Form FmHA 1965–22, "Information of Assumption on New Terms or Other Change of Terms," Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms," and Exhibit D of this subpart in accordance with the provisions of the forms manual insert.

(6) The original and County Office copies of loan notes or assumption agreements that are reamortized will be marked "REAMORTIZED OR RESCHEDULED WITH WRITEDOWN, *Note(s) Number(s).*" The original new Form FmHA 1940–17 will be attached to the original note or assumption agreement being consolidated, rescheduled or reamortized and filed in the promissory note folder. A copy of each document will be filed in the borrower's case file.

(7) If the borrower *owns* real estate property not securing FmHA loans, a condition of the write-down of debt will be for the borrower to allow FmHA to take the best lien obtainable on all borrower owned real estate to, secure any recapture of the written down debt. All notes outstanding for all FmHA loans just prior to the write-down will be listed on the new real estate security instrument. Such real estate security will be taken whether or not the borrower has equity in the property.

(8) If the write-down of the borrower's real estate debt results in all FmHA debt being written down, FmHA real estate liens will be maintained and will not be subordinated during the recapture period.

(9) If a borrower *does not own* any real estate there will be no recapture and the borrower will not be required to enter into a recapture agreement. However, FmHA chattel liens of record will be maintained, unless the write-down of debt results in all of FmHA debts being written off. If the borrower does not own real estate, and the write-down of debt results in FmHA loans being written off in total, all FmHA chattel liens will be released.

(f) *Processing of the Buy Out when borrower(s) pay the net recovery value of the FmHA security.* Upon payment by the borrower of net recovery value, the original security instrument will be released and a new mortgage or deed of trust will be taken to obtain the best lien obtainable on the real estate which will be subordinate to any purchase money security interest which does not exceed the fair market value of the property to enable the borrower to purchase the property at the net recovery value.

§ 1951.912 Mediation.

(a) *Certified State Mediation Program.* The purpose of the mediation program is to participate with farm borrowers, and with their other creditors where such exist, to reach agreements to keep the farmer in business and provide an opportunity to overcome financial difficulties. Where a State has a certified mediation program:

(1) FmHA will participate in accordance with the terms of that program, except that no decision will be binding on FmHA until approved by the appropriate FmHA official. FmHA will participate in mediation under the same terms and conditions applicable to other similarly-situated creditors within the State. For example, where the State program makes participation voluntary on the part of creditors, FmHA's participation will also be voluntary.

(2) When the review of the plan submitted by an applicant for debt write-down shows the existence of a substantial amount of non-FmHA debt, the County Supervisor will request mediation. Mediation proceedings cannot delay consideration of a borrower for loan servicing programs, except with the consent of the borrower.

(3) Mediation fees, if charged to FmHA, will be paid by completing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and submitting Form FmHA 2024–1, "Miscellaneous Payment System," for payment as a non-recoverable cost in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(4) Failure of creditors to participate in mediation will not preclude the FmHA from using Primary Loan Service programs.

(5) The FmHA State Director will assign FmHA employees within their geographic areas of jurisdiction to represent FmHA in a certified State farm credit mediation process. These authorities can vary from complete authority to act for FmHA to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to employees to represent FmHA in mediations and to make decisions to agree to a proposed mediation agreement.

(6) *Training.* The FmHA State Director will arrange for training in mediation techniques to employees delegated to represent FmHA in mediation. This training shall include communication skills, negotiation skills, and analysis of primary loan service programs.

(b) *Voluntary meeting of creditors.* The purpose of voluntary meeting of creditors is to participate with farm borrowers and their creditors to reach agreements to keep the farmer in business.

(1) In cases described in paragraph (a)(2) of this section in States which there is no certified State mediation program, the County Supervisor will assist the borrower in scheduling a meeting with all of the borrower's creditors, and encourage them to participate with FmHA in developing a restructuring plan for the borrower. Voluntary meetings of creditors cannot delay consideration of a borrower for primary loan servicing programs, except with the consent of the borrower.

(2) State Directors will provide County Supervisors with training to enhance their communication and negotiating skills to provide an effective voluntary adjustment program.

(3) The State Director will appoint a person to conduct this meeting and will attempt to develop a plan with the borrower and his/her creditors that will permit the borrower to remain in business and have the opportunity to overcome the financial difficulty. Upon the borrower's request, the State Director will appoint an FmHA employee not previously involved in servicing the borrower's account.

(4) Failure of creditors to participate in voluntary meeting of creditors will not preclude the FmHA from using debt write-down if it would result in a greater net recovery to FmHA than liquidation.

(5) Agreements reached at the meeting of creditors will be confirmed in writing and put in the borrower's case file. Copies will be provided to all creditors participating.

§ 1951.913 [Reserved]

§ 1951.914 Servicing Approved Primary Loan Service Programs.

(a) *Rescheduling requirements:* (1) Notes which are rescheduled with write-down in accordance with this subpart

will not be consolidated during the shared appreciation agreement period.

(2) Notes which are rescheduled with write-down in accordance with this subpart may not be rescheduled or reamortized during the shared appreciation agreement period.

(b) *Finance Office actions:* (1) The Finance Office will establish an equity receivable account in the amount shown on Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable" (available in any FmHA office).

(2) The Finance Office will remove the borrower's name from its delinquency report.

(3) Six months prior to the end of the shared appreciation agreement, not to exceed 10 years, the Finance Office will notify the County Supervisor of the expected final date of the recapture.

(c) *Servicing Shared Appreciation Agreements.* Recapture of any appreciation will take place at the end of the term of the agreement, or sooner if the following occurs:

(1) On the conveyance of the real security property; however, transfer of title to the spouse of a borrower on the death of such borrower, will not be treated by FmHA as a conveyance for the purposes of recapture. Recapture will take place, however, if the surviving spouse sells the subject property or at the end of the recapture agreement, whichever comes first;

(2) On the repayment of the loans;

(3) If the borrower ceases farming operations; or

(4) At the end of the tenth year after debt write-down.

(d) *Procedures for Recapture at the end of Shared Appreciation Agreement:* (1) The County Supervisor will present the borrower with a list of three FmHA approved appraisers. The borrower will select an appraiser to conduct an appraisal of the real estate security. The appraisal cost will be shared equally by FmHA and the borrower. The results of such appraisal will be considered by FmHA in any final determination concerning the shared appreciation agreement.

(2) The borrower will be notified by certified mail "return receipt requested" of the recapture amount due and payable. This notification letter will also include the recapture calculations. The borrower submits the amount due to the FmHA County Office. If the payment is not made by the borrower within 90 days from the date due, the borrower's account will be treated as overdue and FmHA will proceed with collection efforts which may include foreclosure.

(3) The FmHA county office will note all the payments received under the Recapture Agreement on Form FmHA 451-2, "Schedule of Remittance." The following statement should be recorded in the body of the form: "Equity Receivable Payment," along with a copy of the recapture agreement and a copy of Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable," of this subpart.

§ 1951.915 [Reserved]

§ 1951.916 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law, if the Administrator determines the application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only upon request of the State Director and on recommendation of the Assistant Administrator, Farmer Programs, or upon request from that Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect that failure to take such action would have on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.917-1951.949 [Reserved]

§ 1951.950 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number _____.

Exhibit A—Notice of the Availability of Loan Service Programs for Delinquent Farm Program Borrowers

UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION

(Insert Borrower's Address)

Dear (Insert Borrower's Name)

This notice is to advise you that your payments on your debt with the Farmers Home Administration (FmHA) are seriously behind schedule.

In an effort to help you through this difficult financial period, the FmHA is required to provide notice of loan service options to borrowers who are at least 180 days late in making payments on their Farmer Program loan(s). This notice is required by the Agricultural Credit Act of 1987.

The attachments with this notice will provide you with the following loan servicing information:

(1) A summary of all primary loan service programs;

(2) A summary of preservation loan service programs;

(3) Copies of relevant forms needed to apply;

(4) Advice on how to get copies of FmHA regulations;

(5) A description of the FmHA appeal process.

The objectives of the primary servicing programs are to selectively change a delinquent Farmer Program borrower's debt so that he/she can continue farming operations, and to minimize FmHA loan losses.

You must notify FmHA within 45 days after the receipt of this notice if you wish to be considered for the primary and preservation programs. FmHA has 60 days to process your request. The 60-day timeframe will start when you complete and return Attachment 2 along with the fully completed forms attached to this notice.

If you do not notify the FmHA within 45 days that you wish to be considered for Primary or Preservation Servicing programs, FmHA will proceed to accelerate your FmHA debt. This acceleration is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

(Insert County Office Address)

Sincerely,

County Supervisor

Attachments.

Exhibit A—Attachment 1

Farmers Home Administration

Summary of Primary and Preservation Loan Service Programs

This Notice describes the primary and preservation loan service programs available to borrowers from FmHA who have "farmer program loans". If you are one of these borrowers, this Notice gives you general information on the "loan servicing programs" available for these loans. "Loan servicing programs" are methods by which FmHA can reduce the burden of repaying farmer program loans. This Notice describes these programs and tells you (1) how to obtain more information on each one of them, (2) how to apply if you want to be considered for one or more of them, and (3) what your appeal rights are if you are considered for loan servicing, are not granted it, and think that mistakes were made in the consideration process.

A COPY OF THE REGULATIONS DESCRIBING EACH ONE OF THESE PROGRAMS, AND THE FMHA APPEAL REGULATIONS, ARE AVAILABLE ON REQUEST AT ANY COUNTY OFFICE.

The primary and preservation loan service programs described in this Notice apply to FmHA "farmer program borrowers," which

means borrowers with the following types of loans: Operating; farm ownership emergency; soil and water economic emergency; economic opportunity; recreation loans; special livestock and rural housing loans made for farm service buildings. These programs do not apply to "non-program loans," which category includes those loans that are made by FmHA at commercial rates to dispose of excess property.

THESE PRIMARY AND PRESERVATION LOAN SERVICE PROGRAMS EACH HAVE SEPARATE LEGAL REQUIREMENTS, SOME OF WHICH ARE COMPLICATED. YOU MAY WANT HELP IN UNDERSTANDING THEM AND IN EVALUATING YOUR SITUATION. You may wish to consult an attorney to get this help. Additionally, in many States there are organizations that give free or low-cost advice to farmers with serious financial problems. Your local USDA Extension Service, or your State Agricultural Agency, should be able to tell you what is available in your area. BECAUSE YOUR FARMERS HOME ADMINISTRATION COUNTY SUPERVISOR MUST REMAIN NEUTRAL, HE OR SHE CANNOT RECOMMEND ANY PARTICULAR ATTORNEY OR SERVICE.

I. Summary of Primary Loan Service Programs

(1) Loan consolidation means to combine two or more of the same type loans. For example, Operating Loans (OL) can only be combined with other Operating Loans, and Farm Ownership (FO) loans can only be combined with other Farm Ownership loans.

(2) Loan rescheduling means to rewrite the rates and/or terms of OL loans. The pay-back period for OL loans can be rescheduled up to a maximum of 15 years.

(3) Loan reamortization means to rewrite the rates and/or terms of FO loans. The pay-back period for the revised loan term cannot exceed 40 years from the date of the original note.

(4) Interest rate reduction means to lower interest rates to the lowest rate permitted by law for a particular loan type. For instance, the lowest rate for an OL limited resource loan is 3 percent below the regular rate. Regular rates are determined by the Government's cost to borrow money, and these rates vary with the financial market in general.

(5) Deferral means to delay, on a temporary basis, payments of principal and interest on loans. FmHA deferrals are for up to 5 years. You must show that you cannot now pay essential family living expenses, maintain essential chattel and real estate and meet scheduled payments on all debts, AND that this problem is temporary. Your Farm and Home plan must show that the payments on the deferred debt can be resumed at the end of the deferral period.

FmHA sets interest rates and terms for deferred loans at the current rate of interest for loans of the same type or the original loan rate, whichever is lower. See FmHA Instruction § 1951.910(c)(7) for more information on this point.

Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling or reamortization options will not provide sufficient cash flow to make payments on the debt, operate the farm and provide family living expenses.

Note.—FmHA's Softwood Timber program is a special deferral program whereby marginal land, including highly erodible land and pasture, can be planted in softwood timber. The amount of debt cannot exceed $1,000 per acre and can be deferred for up to 45 years. Interest charges will accrue and be added to the loan amount during the deferral period. Payment on the deferred debt plus accrued interest charges must be made when the timber is harvested and sold by the borrower.

Conservation Easements permit a financially distressed borrower to convey an easement on highly erodible land, wetland or other wildlife habitat to the Secretary of Agriculture. The Secretary, as payment for the easement, will permanently reduce the borrower's debt. The reduction will be either the value of the easement land or the difference between the amount of the outstanding loan secured by the land and the current appraised value of the land whichever is greater. The farm acreage remaining after conveying of the easement must be of sufficient size to permit a feasible farming operation.

(6) Debt write-down means to reduce the amount of debt owed by a borrower. Debt write-down can be done by FmHA through the use of Conservation Easements or through a reduction of the loan principal and/or the accrued interest on the loan, to a point as low as the net recovery value to FmHA of the collateral. The "collateral" is the property that was pledged or mortgaged to FmHA in order to get the loan.

(7) The writing down of the loan principal and/or interest charges means a debt write-down to a level where all loans plus interest charges can be paid as scheduled and farm operating and family living expenses can be paid. If you are eligible for the FmHA debt write-down program, the debt is written down to the point where the borrower has a feasible plan of operation. A feasible plan means a realistic plan showing that enough income will be generated to meet the scheduled loan payments, to operate the farm and to pay family living expenses. The debt write-down cannot be an amount less than the net recovery value from the sale of the property serving as security for the debt being written down. Net recovery value means the fair market value of the collateral, as determined by a qualified appraiser, less the government's cost of foreclosing on or liquidating the collateral less the value of any prior liens. If you are seriously delinquent (more than six months behind in your payments) on your farmer program loans, you have a right to be considered for this debt write-down. To be considered you must apply as spelled out in section III. The procedures are spelled out in section IV of this notice. While you have a right to be "considered" for this relief, it will be given only to those who genuinely cannot repay their loans as originally made or as modified by other loan servicing programs. You will be expected to use all resources available to you in an effort to repay your loans before debt with write-down will be granted.

II. Preservation Loan Service Programs

These programs apply when the primary loan service programs cannot help you. These programs are available to you if FmHA already owns your property or you are to about to lose your property to FmHA. The preservation loan service programs include:

(1) Dwelling retention, which means to reacquire ownership or to lease the farm house and out-buildings plus a limited amount of surrounding property used to maintain the occupant and his or her family (no more than 10 acres) for a period of three to five years;

(2) Farmland leaseback or buyback arrangements, which mean that you can either lease the farm that FmHA has taken into inventory, or purchase the farm back from FmHA.

III. How To Apply For Primary Loan Servicing Programs

You can apply for the Primary Loan Servicing programs by returning Attachment 2, "Borrower Acknowledgement of Notice of the Availability of Primary and Preservation Loan Service Programs for Delinquent Farmer Program Borrowers," to the FmHA County Supervisor within 45 days after receiving this Notice. You must also return with Attachment 2 the following forms, fully completed. These forms should be attached to this notice, if this Notice was sent to you because your payments are delinquent by 180 or more days. If your copy of this form does not have the forms attached, call or visit your FmHA County Office to obtain the forms:

Form FmHA 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.

Form FmHA 410–8, "Application Reference Letter."

Form FmHA 410–9, "Statement Regarding the Privacy Act."

Form FmHA 431–2, "Farm and Home Plan."

Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

Form(s) FmHA 1910–5, "Request for Verification of Employment."

Form FmHA 1924–1, "Development Plan," if necessary.

Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Certification."

Form AD–1026—"Highly Erodible Land and Wetland Conservation Certification"

IV. Eligibility for Primary Loan Servicing

Upon receipt of properly completed application forms by the FmHA County Supervisor, the County Supervisor must determine that:

(1) Your financial difficulty is due to conditions beyond your control, such as:

(a) Natural disaster declared by the President or Secretary;

(b) Illness in the family;

(c) Loss of off-farm income;

(d) Depressed economic conditions in local agriculture.

(e) Financial difficulty is not outside your control if you have sufficient assets to make payments to FmHA, and you are not making payments.

(2) You have acted in good faith in your dealings with FmHA. This means you are attempting to live up to your agreements with FmHA and are maintaining your property which is collateral for FmHA loans.

(3) You have a feasible plan of operation. If your plan shows that you will be able to repay your loan or loans to FmHA through one or a combination of the methods described in (1) through (5) of Section I, your debt will not be write-down, because these methods are less costly to the Government.

Within 60 days after receiving your request for primary and preservation loan servicing, the County Supervisor will take the information you have provided with your application and calculate the net recovery value of your collateral. This information will be provided to you.

If the FMHA County Supervisor concludes that the Government can collect more money by writing down your debt than can be obtained by foreclosure and that the other loan servicing programs will not be sufficient to allow you to continue farming, you will be offered a write-down which will include a change in payment schedules on the remaining debt which is not written-down. You will receive a copy of the County Supervisor's analysis along with an appointment date to take adjustment action on your debt. As a condition of this relief, the County Supervisor will require you to sign a "shared appreciation agreement." This is an agreement that requires you to repay a portion of the amounts written down, depending on the appreciation of your real estate security property in future years.

If you do not qualify for debt write-down and the FmHA County Supervisor determines that continuation of your farming operation requires debt adjustment actions by other lenders, mediation will be requested where approved State mediation programs are available or through informal negotiation where approved mediation programs are not available.

If the FmHA County Supervisor cannot find a way for you to continue your farming operation, you will be determined to be ineligible for FmHA's primary loan servicing programs. You will be so notified and will be advised to attend a meeting with the County Supervisor and, if you think that the decision is in error, how to appeal the decision.

V. What Happens When You Are Not Eligible For Primary Loan Servicing

You will be advised that you may purchase the property securing the debt to FmHA at the net recovery value of that property. FmHA determines net recovery value by subtracting from the current market value of the property securing the debt, all costs of liquidating, acquiring, and disposing of the collateral for your loan and the value of any prior liens. These liquidation costs include estimated administrative, legal, and other expenses associated with a liquidation process and disposition of the collateral.

Should you decide to purchase the property, you must advise your County Supervisor within 45 days after being advised of the FmHA's decision not to write down your loan or to give you other primary loan servicing. If you appeal this decision, you will have 45 days after any final decision on your appeal to offer to purchase the property. Your purchase of this property must be paid for in cash. Financing will not be provided by FmHA.

VI. What Happens If You Decide Not To Purchase The Property

If you decide not to purchase the property, your collateral must be liquidated. This can be accomplished in three ways:

(1) You can sell or transfer the property for market value and pay that amount to FmHA,

(2) You can convey the property to FmHA, or

(3) You can let the Agency proceed with foreclosure.

If selection and completion of any of the methods set forth above results in less than full payment of your FmHA debt, you may apply for debt settlement. You will also have an opportunity to apply for the "Preservation Loan Service Programs" described later in this Notice concerning your farm property that FmHA takes into inventory.

VII. Eligibility For Preservation Loan Service Programs

(1) *Dwelling Retention.* The following eligibility requirements must be met:

(a) You will be notified within 30 days after FmHA acquires your property. You must apply for occupancy not later than 90 days after the property is acquired by FmHA. Also, you must have received, from farming or ranching operations, gross farm income similar to farms of comparable size and location experiencing the same local agricultural conditions in at least 2 calendar years during the six year period preceding the calendar year when you apply.

(b) Sixty (60) percent of your gross annual income in at least 2 calendar years during the 6-year period immediately preceding the calendar year in which the application is made must be from your farming or ranching operations.

(c) You must have continuously occupied the homestead property during the 6 calendar years immediately preceding the calendar year when you apply. This requirement may be waived by FmHA if you have, due to circumstances beyond your control, had to leave the property for a period not exceeding 12 months during the 6-year period. Should you desire to lease the homestead, you must pay FmHA a reasonable sum as rent. Rents charged by FmHA will be comparable to similar residential properties in the area. You are expected to maintain the property in good condition.

You must meet other reasonable and necessary terms and conditions in the lease as required by FmHA.

(d) The homestead property can be leased to you for not less than 3 years or more than 5 years. The homestead property cannot be subleased or assigned by you.

(e) Your failure to make timely rental payments to FmHA will give FmHA the right to evict you. FmHA will allow you a hearing under FmHA's administrative appeal procedure and will comply with all applicable State and local laws governing the termination of your lease before eviction.

Note: At any time during the term of your lease, you have the right to purchase the homestead property at the current market value as established by an independent appraisal. If you want to buy the property during the term after lease, contact the county supervisor. You will need to discuss financing arrangements for the purchase of your homestead with the FmHA County Supervisor.

(2) *Leaseback and/or buyback of farm inventory property.* When FmHA has acquired your property, it may be available to you under our leaseback/buyback program, subject to any conservation measures needed to protect floodplains and wetlands. If you are the previous owner, you will have 190 days, beginning on the date of FmHA acquisition, or during the applicable period under State law (whichever is longer) to purchase or lease the property. If you do not want to lease or buy the property, your spouse or children who are actively engaged in farming will have the same 190 day period to exercise their rights to leaseback/buyback. Members of family-held corporations, partnerships and joint operations have the same rights to leaseback/buyback as a previous owner. It is up to you to notify your family members or stockholders of their leaseback/buyback rights if you do not wish to exercise them yourself.

The first right to acquire the property goes to the previous owner from whom FmHA acquired the real estate property. If you were an operator (and not also the owner) of the property at the time it was acquired by FmHA, and the owner or owner's immediate family does not buy or lease the property, you will be next in line for purchase or lease opportunities. Operators of family-size farms receive the next preference after operators of the property. If the real estate is located within an Indian reservation and you are a member of that tribe, FmHA will within 90 days after the expiration of the period for which the right to purchase or lease real property by the immediate previous owner has expired, make offers in accordance with special priorities which are required by law. You may find out more information on these priorities by contacting the FmHA county office.

For buyback which would be financed by FmHA and leaseback the following eligibility conditions must be met:

(a) You must have sufficient management skills and financial resources to assure a reasonable prospect of success. However, you do not need management skills if you have the resources to obtain financing outside of FmHA.

(b) You must submit a farm plan that reflects evidence of a feasible operation.

(c) You must pay rent or purchase the property at an amount which reflects the current market value of the property.

VIII. How Do You Apply For The Preservation Loan Servicing Programs?

There are several ways to apply for these programs depending on your situation. If FmHA already owns your property you should apply by returning Attachment 2 of this notice within 45 days of when you receive them. If FmHA does not own your property, you should discuss these programs with the FmHA County Supervisor as soon as

you decide that you are interested in them. You should ask the County Supervisor to discuss the eligibility requirements with you. FmHA is authorized to enter into an agreement with you so that, prior to FmHA acquiring the property, you may receive either of these two preservation loan servicing programs if you are eligible. Any agreement between you and FmHA may have conditions that need to be met. There may be cases where you will be eligible but may not be able to meet FmHA credit requirements or other conditions.

IX. Appeals

Appeals are a procedure where you can request a hearing of any adverse decision by an impartial hearing officer, plus further review of the hearing officer's decision. The hearing proceedings are recorded, and you can purchase a written transcription if you wish. All exhibits presented at the hearing will become a part of the hearing record.

X. Summary

FmHA debt primary servicing programs will modify delinquent farmer program loans to minimize losses to the Government on such loans and allow the borrowers to continue their farming operations. If you are 180 days delinquent, you may apply for any or all of these programs. When FmHA acquires your property or is about to acquire your property, you may apply for preservation loan servicing programs. You may appeal adverse decisions.

TO TAKE ADVANTAGE OF MOST OF THESE PROGRAMS YOU MUST APPLY DURING THE TIME DESCRIBED IN FmHA'S REGULATIONS WHICH ARE SUMMARIZED IN THIS NOTICE.

A copy of FmHA's regulations are available on request to any FmHA office. You do not have to apply for preservation loan servicing programs now if FmHA has not yet acquired your property. You will be notified again, if FmHA acquires your property, that you can apply for those programs. However, to apply for the primary loan servicing programs, including debt writedown, you must return Attachment 2 within 45 days after you receive this notice.

Exhibit A—Attachment 2

UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION

Borrower Acknowledgement of Notice of the Availability of Primary or Preservation Loan Service Programs

County Supervisor, FmHA

This acknowledges that I (we) have received Notice of Availability of [FmHA Primary and Preservation] Loan Service Programs for Delinquent Farm Program Borrowers dated _____.

[Check one or more of the following blocks:]

☐ (1) I (we) specifically request FmHA to consider me for all primary and preservation loan service programs—including debt deferral and debt writedown. I understand I will be notified of my appeal rights after FmHA makes a decision on my request.

_____

(Date)

_____

_____

(Signature of borrower)

Exhibit A—Attachment 3

Notification of Borrowers Whose FmHA Loan Accounts Were Accelerated Between November 1, 1985, and May 7, 1987, Who Did Not Request Debt Restructuring and the Release of Normal Farm Income; and Borrowers Whose FmHA Loan Accounts Were Accelerated Before November 1, 1985

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Continue with Acceleration of your Farmers Home Administration Account and Notice of your Rights.

- To request to voluntarily convey to FmHA all collateral serving as security for your debt to FmHA and release of liability upon completion of Debt Settlement.
- To request leaseback or buyback of your farm real estate from FmHA inventory after voluntary conveyance or foreclosure.
- To request to retain your home after it is acquired by FmHA.

Dear:

FmHA proposes to *continue* with the acceleration of your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property, taking by offsets money you are owed by other Federal agencies, and/or in other ways proceeding against property you own in which FmHA has a security interest.

You can avoid foreclosure of your account(s) by voluntarily conveying the property securing your loan(s) to FmHA. FmHA will accept the conveyance *if* it is in the Government's financial interest to do so. You may be released from personal liability on your loan obligations to FmHA if you meet the requirements of FmHA's debt settlement regulations. You *must* request a meeting with the County Office staff within 15 days to discuss voluntary conveyance.

Although you will lose title to your property when a foreclosure or voluntary conveyance occurs, you will be able to apply for the preservation loan service programs. If you are eligible for these programs, you can retain possession of your home or farm. For a complete description of these programs, see Exhibit A, Attachment 1, pages 11–14 which FmHA sent to you on (*insert date*).

If you do not respond to this notice, FmHA will continue with the acceleration of your FmHA debts, with all of the consequences discussed above. The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of ____, 19____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances. Unless full payment of your indebtedness is received within 30 days from the date of this letter or you voluntarily convey the property to the Government, the United States will take action to foreclose on real estate and/or chattels, repossess personal property, take by offsets money you owed by other Federal agencies and in other ways proceeding against property you own in which FmHA has a security interest.

Payment should be made by cashier's check, certified check, or postal money order payable to the Farmers Home Administration and delivered to the County Supervisor of the Farmers Home Administration at

_____

_____

(street address or P.O. Box)

_____

_____

(city)

_____

_____

(State)

_____

_____

(zip code)

If you submit to the United States any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between the Farmers Home Administration and yourself, that payment *WILL NOT CANCEL* the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the security instrument(s) will result and the Farmers Home Administration may proceed as though no such payment had been made.

- (Your mortgage or deed of trust provides that the United States may foreclose without Court action by selling the property at public sale after _____. The Government intends to sell the property in this manner.)

If you do not request voluntary conveyance or pay FmHA the amount indicated above, the United States plans to proceed with foreclosure or liquidation.

- (This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.)

Sincerely,

_____

_____

County Supervisor,
Farmers Home Administration.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Exhibit A—Attachment 3A

Notification of Borrowers in Cases Involving Bankruptcy Whose FmHA Loan Accounts Were Accelerated Between November 1, 1985, and May 7, 1987, Who Did Not Request Debt Restructure and The Release of Normal Farm Income

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Continue with Acceleration of your Farmers Home Administration Account and Notice of your Rights.

- To request to voluntarily convey to FmHA all collateral serving as security for your debt to FmHA and release of liability upon completion of Debt Settlement.
- To request leaseback or buyback your farm real estate from FmHA inventory after voluntary conveyance or foreclosure
- To request to retain your home after it is acquired by FmHA.

Dear:

FmHA proposes to *continue* with the acceleration of your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property, taking by offsets money you are owed by other Federal agencies, and/or in other ways proceeding against property you own in which FmHA has a security interest.

You can avoid foreclosure of your account(s) by voluntarily conveying the property securing your loan(s) to FmHA. FmHA will accept the conveyance. *if* it is in the Government's financial interest to do so. You may be released from personal liability on your loan obligations to FmHA if you meet the requirements of FmHA's debt settlement regulations. You *must* request a meeting with the County Office staff within 15 days to discuss such a conveyance.

Although you will lose title to your property when a foreclosure or voluntary conveyance occurs, you will be able to apply for the preservation loan service programs. If you are eligible for these programs, you can retain possession of your home or farm. For a complete description of these programs see Exhibit A, Attachment 1, pages ____—____ which FmHA sent to you on _____.

If you do not respond to this notice, FmHA will continue with the acceleration of your FmHA debts, with all of the consequences discussed above.

The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of _____, 19____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances. The security instrument(s) executed by you in favor of the FmHA is (are) not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debt, although a discharge under the Bankruptcy Code does render any debt discharged unenforceable as your personal obligation. In other words, if FmHA goes ahead with foreclosure or liquidation all property which is security would be sold. If the proceeds from the sale are not sufficient to pay off the debt, FmHA cannot seek a personal judgment against you for any deficiency. This letter is not intended as an act to collect or recover any debt from you for which your personal obligation has been discharged pursuant to 11 U.S.C. 524 but rather it is intended to collect or recover any such debt from the property which is security for the loan(s) made to you.

Unless full payment of the secured debt is received within 30 days from the date of this letter or you voluntarily convey the property to the Government, the United States will take action to foreclose/liquidate under the authority granted in the mortgage or deed of trust.

Payment should be made by cashier's check, certified check, or postal money order payable to the Farmers Home Administration and delivered to the County Supervisor of the Farmers Home Administration at

_____

(street address or P.O. Box)

_____

(city)

_____

(State)

_____

(zip code)

If you submit to the United States any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between the Farmers Home Administration and yourself, that payment *Will Not Cancel* the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the security instrument(s) will result and the Farmers Home Administration may proceed as though no such payment had been made.

- (Your mortgage or deed of trust provides that the United States may foreclose without Court action by selling the property at public sale after_____. The Government intends to sell the property in this manner.)

If you do not request voluntary conveyance or pay FmHA the amount indicated above, the United States plans to proceed with foreclosure or liquidation.

- (This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.)

Sincerely,

_____

County Supervisor,
Farmers Home Administration.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Exhibit A—Attachment 4

Response To Notice of Intent To Continue With Acceleration and Notice of Borrowers Rights

To: County Supervisor
Farmers Home Administration.

From: _____

(Please print your name. Also print your mailing address if it is NOT the same as the address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Continue with Acceleration that I received with this response form. Please consider me for the following:

☐ I would like to have a meeting with the FmHA County Official responsible for my account to discuss voluntary conveyance to FmHA collateral serving as security for my FmHA account and request to be relieved of liability for these accounts. If I want a meeting, I must return this form within 15 days. My current telephone number is _____.

☐ I would like to be considered for the Preservation Loan Servicing options.

_____

(Date)

_____

(Borrower's Signature)

Sincerely,

County Supervisor,
Farmers Home Administration.

Exhibit A—Attachment 5

For Borrowers With Non-Monetary Defaults and When a Prior Lienholder or Junior Lienholder Is Foreclosing

Dear:

As outlined below, there are other problems affecting your borrowing relationship with us. Specifically, our review of your Farmers Home Administration (FmHA) loan accounts indicates that:

☐ You are presently $_____ behind schedule on your FmHA loan installments which is a violation of your security agreement.

☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is

_____

(describe property)

☐ You have stopped farming or ranching which is a violation of your loan agreements.

☐ You have

_____

_____

(insert the reason(s) for the proposed adverse action)

Because of the reasons as indicated by the boxes checked above, FmHA proposes to accelerate your loans. This is a very severe action, and the result will be that FmHA will

take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

Before any of this happens, however, you can take the following steps. If you are experiencing financial stress, you can apply for the loan servicing programs described in an attachment to this notice.

The attachments with this notice will provide you with the following loan servicing information:

(1) A summary of all primary loan service programs;
(2) A summary of preservation loan service programs;
(3) A summary of debt settlement programs;
(4) Copies of relevant forms needed to apply;
(5) Advice on how to get copies of FmHA regulations;
(6) A brief description of the FmHA appeal process.

The objectives of the primary servicing programs are to selectively change a delinquent farmer program borrower's debt so that he/she can continue farming operations, and to minimize FmHA loan losses.

You must notify FmHA within 45 days after the receipt of this notice if you wish to be considered for the primary and preservation programs. This FmHA process will start when you complete and return Attachment 6 along with the fully completed forms attached to the notice.

You also have the right and opportunity to have a meeting with your FmHA County Official before a decision to accelerate is made. If you wish to make use of this opportunity to contest these allegations or the proposed adverse action, or to get any explanations or have any discussions you wish, you must, within *15* days from the date of this notice, check the box on the enclosed Attachment 6, "Response to Notice of Intent to Accelerate," and "Notice of Borrower Rights," and mail it to your County Office. While you are not obliged to do so, we recommend that you send the form back as soon as you can if you want a meeting, and also call your County Office to set it up. If you request loan servicing, your request for a meeting will be postponed until a decision is made on your loan servicing request.

You also have a right to an administrative appeal from the decision to accelerate your loan. If you request a meeting, you will have the same right to appeal after the meeting. That is, you will still have the opportunity to appeal the decision and the Notice before any acceleration takes place. However, if you fail to request loan servicing now, or a meeting now, then you must request an appeal if you want one. You can request this appeal by checking the appropriate box on the enclosed Attachment 6, "Response to Notice of Intent to Accelerate," and "Notice of Borrower Rights," and mailing it to your County Office within 30 days of your receipt of this notice.

If you do not respond to this Notice, FmHA will proceed with accelerating your FmHA debts. Again, this action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the application has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,
Farmers Home Administration,
United States Department of Agriculture.
Date: _____

Exhibit A—Attachment 6

Response to Notice of Intent to Accelerate and Notice of Borrower's Rights

To: County Supervisor,
Farmers Home Administration.
From: _____

(Please print your name. Please also print your mailing address if it is NOT the same address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Accelerate that I received with this response form. Please consider me for the following:

(check appropriate items or boxes)

☐ I would like to have a meeting with the FmHA County Official responsible for my account. If I want a meeting, I must return this form within 15 days. My current telephone number is _____. I understand that I do not lose my appeal rights by requesting this meeting.

☐ I would like FmHA to consider me for all applicable primary and preservation loan service programs including debt deferral. I must return this form within 45 days.

☐ I would like to have an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to schedule my appeal hearing and to give me further information. I must return this form within 30 days.

_____
(Date)

_____
(Borrower's signature)

Exhibit A—Attachment 7

Notice of Intent to Accelerate and Notice of Your Rights

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Accelerate your Farmers Home Administration Account and Notice of Your Rights

- to have a meeting with your County Official.
- to appeal the decision that a feasible plan cannot be developed.
- to pay FmHA the net recovery value of the collateral securing your debt to FmHA and be released from liability after the recapture period.
- to request voluntary conveyance to FmHA of all collateral serving as security for your debt and consideration for release of liability upon completion of the transaction.
- to apply for leaseback or buyback of your farm real estate from FmHA inventory after voluntary conveyance or foreclosure.
- to request to retain your home after it is acquired by FmHA.

Dear:

As outlined below, your account with the Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us. Specifically, our review of your FmHA loan accounts indicates that:

☐ You are presently $_____ behind schedule on your FmHA loan installments which is a violation of your security agreement.

☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is (describe property)_____

☐ You have stopped farming or ranching which is a violation of your loan agreements.

☐ You have

_____

_____

(insert the reason(s) for the proposed adverse action)

☐ A feasible plan of operation cannot be developed considering all primary loan servicing, softwood timber and conservation easement programs. See attached computer printout which summarizes FmHA's calculations.

Because of the reasons as indicated by the boxes checked above, FmHA proposes to accelerate your loans. This is a very severe action, and the result will be that FmHA will take 1egal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

Before any of this happens, however, you can take the following steps.

First, you have the right and opportunity to have a meeting with your FmHA County Official before a decision to accelerate is made. If you wish to make use of this opportunity to contest these allegations or the proposed adverse action, or to get any explanations or have any discussions you wish, you must, within 15 days from the date of this notice, check the box on the enclosed Attachment 8, "Response to Notice of Intent to Accelerate" and "Notice of Borrower Rights," and mail it to your County Office. While you are not obliged to do so, we recommend that you send the form back as soon as you can if you want a meeting, and also call your County Office to set it up.

You also have a right to an administrative appeal to the appeals division and the right to appear before the hearing officer. The appeal will allow you to contest the reasons for FmHA's decision, and to request an independent appraisal of any property securing your FmHA loan(s). If you request a meeting, you will have the same right to appeal after the meeting. That is, you will still have the opportunity to appeal the decision and the Notice before any acceleration takes place. However, if you fail to request a meeting now, then you must request an appeal if you want one. You can request this appeal by checking the appropriate box on the attached "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," Attachment 8, and mailing it to your County Office within 30 days of your receipt of this notice.

You also have the right to pay FmHA the net recovery value of the collateral serving as security for your FmHA loans, with the balance of your debt being written off, subject to a recapture of the difference between the net recovery value and the current market value should you sell the collateral within 2 years from the date of your payment to FmHA. You have 45 days from the date of this notice to exercise your right to pay FmHA the net recovery value of the collateral. Your payment to FmHA must be in cash, money order, certified check or equivalent. If you appeal the decision of FmHA to deny your primary loan servicing, softwood timber or conservation easement request, the 45-day period to pay the net recovery value of the collateral will start on the date of any final decision letter concluding your appeal rights.

If you do not respond to this Notice, FmHA will proceed with accelerating your FmHA debts. Again, this action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

If an appeal of the FmHA decision to deny your request for loan servicing is upheld, no further FmHA financial assistance/or operating loans will be provided.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor, Farmers Home Administration, United States Department of Agriculture.

Date: _____

Exhibit A—Attachment 8

Response To Notice of Intent To Accelerate and Notice of Borrowers Rights

To: County Supervisor, Farmers Home Administration.

From: _____

(Please print your name. Please also print your mailing address if it is NOT the same address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Accelerate that I received with this response form. Please consider me for the following:

(check appropriate item or boxes)

- ☐ I would like to have a meeting with the FmHA County Official responsible for my account. My current telephone number is _____. I understand that I do not lose my appeal rights by requesting this meeting.
- ☐ I would like to purchase my FmHA Farmer Program Loan(s) for cash at the net recovery value of the collateral serving as security for my FmHA account.
- ☐ I would like to voluntarily convey to FmHA all collateral serving as security for my FmHA account and request to be relieved of liability for these accounts.
- ☐ I would like to be considered for preservation loan service options.
- ☐ I would like to have an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to schedule my appeal hearing and to give me further information.
- ☐ I would like to request an independent appraisal of property securing my loan(s) at my own expense. I understand that the hearing officer from the National Appeals Staff will provide me names of three appraisers.

_____

(Date)

_____

(Borrower's signature)

Exhibit A—Attachment 9

Notice of Intent To Accelerate and Notice of Your Rights

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Accelerate Your Farmers Home Administration Account and Notice of Your Rights for Borrowers Who do not Request Primary Loan Servicing Programs

- To have meeting with your County Official.
- To appeal the FmHA decision.
- To request voluntary conveyance to FmHA of all collateral serving as security for your debt and consideration for release of liability upon completion of the transaction.
- To apply for leaseback or buyback of your farm real estate from FmHA inventory after voluntary conveyance or foreclosure.
- To request to retain your home after it is acquired by FmHA.

Dear:

As outlined below, your account with the Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us. Specifically, our review of your FmHA loan accounts indicates that:

- ☐ You are presently $_____ behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.
- ☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is (describe property)

  _____
- ☐ You have stopped farming or ranching which is a violation of your loan agreements.
- ☐ You have

_____

_____

(insert the reason(s) for the proposed adverse action)

Because of the reasons as indicated by the boxes checked above, FmHA proposes to accelerate your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

Before any of this happens, however, you can take the following steps.

First, you have the right and opportunity to have a meeting with your FmHA County Official before a decision to accelerate is made. If you wish to make use of this opportunity to contest these allegations or the proposed adverse action, or to get any explanations or have any discussions you

wish, you must, within 15 days from the date of this notice, check the box on the enclosed Attachment 10, "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," and mail it to your County Office. While you are not obliged to do so, we recommend that you send the form back as soon as you can if you want a meeting, and also call your County Office to set it up.

You also have a right to an administrative appeal to the appeals division and the right to appear before the hearing officer. The appeal will allow you to contest the reasons for FmHA's decision, and to request an independent appraisal of any property securing your FmHA loan(s). If you request a meeting, you will have the same right to appeal after the meeting. That is, you will still have the opportunity to appeal the decision and the Notice before any acceleration takes place. However, if you fail to request a meeting now, then you must request an appeal if you want one. You can request this appeal by checking the appropriate box on the attached "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," Attachment 10 and mailing it to your County Office within 30 days of your receipt of your notice.

If you do not respond to this Notice, FmHA will proceed with accelerating your FmHA debts. Again, this action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor, Farmers Home Administration, United States Department of Agriculture.

Date: _____

Exhibit A—Attachment 10

Response To Notice of Intent To Accelerate and Notice of Borrowers Rights

To: County Supervisor, Farmers Home Administration.

From: _____

(Please print your name. Please also print your mailing address if it is NOT the same address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Accelerate that I received with this response form. Please consider me for the following:

(check the appropriate item or items)

[ ] I would like to have a meeting with the FmHA County Official responsible for my account. My current telephone number is _____. I understand that I do not lose my appeal rights by requesting this meeting.

[ ] I would like to voluntarily convey to FmHA all collateral serving as security for my FmHA account and request to be relieved of liability for these accounts.

[ ] I would like to apply for preservation loan service options.

[ ] I would like to have an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to schedule my appeal hearing and to give me further information.

[ ] I would like to request an independent appraisal of property securing my loan(s) at my own expense. I understand that the hearing officer from the National Appeals Staff will provide me names of three appraisers.

_____

(Date)

_____

(Borrower's signature)

Exhibit B—Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable

Chief, Loan and Investor Accounting Branch

Reply to Attn of: FC–340

_____

Name of Borrower

_____

Address

_____

In accordance with FmHA Instruction 1951–S, "Farmer Program Account Servicing Policies," we have granted this borrower a noncash credit for his/her farmer program loan(s). In consideration for this noncash credit an equity receivable account will be established in accordance with the attached Equity Recapture Agreement signed by the borrower. Please apply a noncash credit as follows:

Case Number:

ST _____

CTY _____

Borrower ID _____

Effective date of credit: (Date of approval)

Loans involved:

Loan Code

Amount credit per loan

Total noncash credit to be applied:

_____

_____

County Supervisor

_____

Date

Attachment.

Exhibit C—Equity Recapture Agreement

In consideration of the Farmers Home Administration (FmHA) allowing me/us to purchase the real estate property securing my/our FmHA Farmer Program loan obligations at the net recovery value of $_____ in accordance with FmHA Instruction 1951–S, I/we agree to pay the difference between the net recovery value of the security of $_____ and the fair market value of the real estate property of $_____ as of the date of this agreement, if I/we sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $_____. I further agree to give FmHA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FmHA at the net recovery value.

I/We understand that the difference between the net recovery value of the real estate securing the FmHA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I/we sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I/we realize a gain in this transaction. I/We understand that FmHA will release the mortgage or deed of trust authorized above two years from the date of this agreement if I/We do not sell or otherwise convey this property during the two–year period, and cancel the obligation under this agreement.

_____

Date of Agreement

_____

Borrower

Exhibit D—Shared Appreciation Agreement

This Agreement is entered into between (FmHA) and (Borrower's name) (called "Borrower") on (Date) and expires on (Date) (maximum term of ten (10) years).

Borrower is indebted to FmHA for loan(s) as evidenced by the note(s) described below:

Date	Principal amount	Interest rate	Due date

This Agreement is attached to the note(s) described above. As of the date of this Agreement, before write-down, the unpaid principal balance on this note was $_____ and the unpaid interest balance was $_____. These note(s)

were modified by the following note(s) which are attached to note(s) described above.

Date	Principal amount	Interest rate	Due date

The note(s) described above are secured by the following real estate security instruments:

Grantor	Date of security instrument	Records of — County State	Book or reel	Page

As a condition to, and in consideration of, FmHA writing down the above amounts and restructuring the loan, Borrower agrees to pay FmHA an amount according to one of the following payment schedules:

1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date the Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by FmHA will be based on the difference between the value of the security at the time of disposal or cessation by Borrower of farming and the value of the security at the time this Agreement is entered into.

(Borrower's signature)

(Farmers Home Administration)

Exhibit E—Notification of Request for Mediation or Meeting of Creditors

To Be Used By FmHA To Inform Borrowers That FmHA Is Requesting Mediation or That FmHA Will Schedule a Meeting of Creditors

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farmers Home Administration (FmHA) has carefully considered your request for primary loan servicing programs. Our calculations indicate that due to your other debts, FmHA will be unable to utilize the primary loan servicing, softwood timber or conservation easement programs to assist you to remain in farming. Attached are the calculations on which our decision is based.

(Use the appropriate following paragraph.)

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your other creditors will adjust your loans sufficiently to permit you to develop a feasible plan of operation.

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation.

Sincerely,

County Supervisor.

Exhibit F—Notification of Offer To Restructure Debt

To Be Used By FmHA To Offer To Restructure The Borrower's Debt

(Borrower's Name and Address)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration (FmHA) can approve your request for primary loan servicing programs.

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

If you want FmHA to use the primary servicing program identified on the computer printout to keep you on the farm, you must accept this offer in writing. Your acceptance must be received by FmHA not later than 45 days from your receipt of this letter. If you do not accept this offer, FmHA will deny your request for primary loan servicing. You will receive an additional notice stating that FmHA intends to liquidate your account. The notice will explain the reasons for this action and give you the opportunity to appeal.

Sincerely,

County Supervisor.

Exhibit G—Deferral, Reamortization and Reclassification of Distressed Farmer Program (FP) Loans for Softwood Timber Production (ST) Loans

I. General

Borrowers with distressed FP loans, as defined in this exhibit, with 50 or more acres of marginal land may request FmHA assistance under the provisions of this section. Such distressed FP loans may be reamortized with the use of future revenue produced from the planting of softwood timber on marginal land as set out in this section. The basic objectives of the FmHA in reamortizing and deferring payments of distressed FP loans (ST loans) to financially distressed farmers are to develop a feasible plan to assist eligible FmHA borrowers to improve their financial condition, to repay their outstanding FmHA debts in an orderly manner, to carry on a feasible farming operation, and to take marginal land, including highly erodible land, out of the production of agricultural commodities other than for the production of softwood timber. County Supervisors are authorized to approve softwood timber (ST) loans subject to the limitations in paragraph VI of this exhibit.

(A) Management assistance

FmHA management assistance will be provided to borrowers to assist them to achieve loan objectives and protect the Government's financial interests, in accordsnce with Subpart B of Part 1924 of this chapter.

(B) Definitions.

(1) Distressed FmHA Loan

An FP loan which is delinquent or in financial distress because a borrower cannot project a feasible plan by using the other loan modification actions including rescheduling, reamortizing or deferral for the maximum term.

(2) Marginal Land

Land determined suitable for softwood timber production by the Soil Conservation Service (SCS) that was previously pasture land or within the last five years used for the production of agricultural commodities, as defined in § 12.2 of Subpart A of Part 12 of this chapter and which is Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter. This could include:

(a) Highly erodible land as defined or classified by the SCS under § 12.2 of Subpart A of Part 12 of this chapter, or

(b) Marginal lands that predominantly include soils that are in Classes IV, V, VI, VII, or VIII in the SCS's Land Capability Classification System. However, marginal land shall not include wetlands as defined in § 12.2(a)(26) of Subpart A of Part 12 of this chapter and which is Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(3) Softwood Timber

The wood of a coniferous tree having soft wood that is easy to work or finish and is commonly grown and commercially sold for pulpwood, chip, and sawtimber.

(C) ST Loan Eligibility

A borrower must:

(1) Have the debt repayment ability and reliability, managerial ability and industry to carry out the proposed timber production operation.

(2) Be willing to place not less than 50 acres of marginal land in softwood timber production; such land (including timber) may not have any lien against it other than a lien for ST loans.

(3) Have properly maintained chattel (i.e. movable property) and real estate security and accurately accounted for the sale of security, including crops, and livestock production.

(4) Be an FmHA FP loan borrower who owns 50 acres or more of marginal land which SCS determines to be suitable for softwood timber.

(5) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed timber operation.

(6) Have one or more distressed FmHA FP loans as defined by this exhibit.

(7) Not have a total indebtedness of ST loan(s) that will exceed $1,000 per acre for the marginal land at closing. *Example:* If 50 acres of marginal land is put in softwood timber production, the total ST loan indebtedness may not exceed $50,000 at closing.

(8) Be able to obtain sufficient money through FmHA or other sources including cost-sharing programs for forestry purposes

for the planting, caring, and harvesting of the softwood timber trees.

II. Reamortization Requirements

(A) A Timber Management Plan must be developed with the assistance of the Federal Forest Service (FS), State Forest Service or such other State or Federal agencies or qualified private forestry service. The plan will outline the necessary site preparation, planting practices, environmental protection practices, tree varieties, the harvesting projection, the planned use of the timber, etc.

(B) The following requirements must also be met:

(1) If the borrower is otherwise eligible, the County Supervisor must determine that a feasible farm plan as defined by Subpart B of Part 1924 of this chapter on the present farm operation is not possible without using the provisions of this section. The County Supervisor must calculate the borrower's plan of operation, using the maximum terms for the rescheduling, reamortization and deferral authorities set out in this subpart. If a feasible projection can be achieved by using any of these authorities, the borrower's account will be rescheduled, reamortized or deferred, as applicable. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a feasible plan can be achieved. The County Supervisor must document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. A copy of this documentation must also be given to the borrower. If a feasible plan is shown, the borrower is not eligible for a reamortization of a distressed loan(s) as set out in this section. The borrower will be given an opportunity to appeal the FmHA denial, as provided in § 1951.91(c) of this subpart after the County Supervisor determines the borrower's eligibility for the other servicing programs in this chapter.

(2) If a feasible plan cannot be developed on the present farm operation, the County Supervisor will determine if a feasible plan would be possible by deferring and reamortizing a portion of one or more distressed FP loans as ST loans. The ST loan is limited to the loan amount (rounded up to the nearest $1,000) sufficient to produce a feasible plan. However, the amount of the loan cannot exceed the $1,000 per acre specified in paragraph I(C)(7) of this exhibit. The borrower, with assistance from the County Supervisor, must be able to develop a feasible farm plan for the first full crop year of the deferral.

(3) When a loan is reamortized the accrued interest more than 90 days overdue will be capitalized. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII(B) of this section. If income is available, payments will be required as determined in paragraph II(B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX(H) of this exhibit.

(4) If assistance is granted, an annual plan will be developed each year to determine if there is any balance available to pay interest and/or principal on ST loans before the deferral period ends. If a balance is available, the borrower will sign Form FmHA 440–9, "Supplementary Payment Agreement."

(5) Applicable requirements of Subpart G of Part 1940 of this chapter must be met.

(C) If a borrower has requested an ST loan that has a portion of the debt set-aside under this subpart, the set-aside will be canceled at the time the reamortization is granted. The borrower may retain the set-aside on other loans. A borrower who requests a reamortization of a distressed set-aside loan must agree in writing to the cancellation of the set-aside. The written agreement must be placed in the borrower's case file.

(D) If the total amount of the distressed FP loan(s) exceeds $1,000 per acre of the marginal land designated for softwood timber production, the FP loan must be split. The split portion of the loan may not exceed $1,000 per acre for the marginal land. A new mortgage will be required to secure this portion of the loan unless the FmHA State supplement allows otherwise. The mortgage must ensure that FmHA has a security interest in the timber. The remaining balance of such a split loan will be secured by the remaining portion of the farm and such other security previously held as security prior to the split. Separate promissory notes will be executed for each portion of the split loan. The remaining portion of the note will be rescheduled, deferred, or reamortized, as applicable, in accordance with this subpart. The ST loan will be deferred and reamortized in accordance with this section. The ST loan(s) will be secured by the marginal land including timber.

(E) The County Supervisor will release all other liens securing FmHA loans including NP loans on such marginal land when the ST loan is closed. Only ST loans will be secured by such marginal land including timber. Releases will be processed in accordance with Subpart A of Part 1965 of this chapter. Such releases are authorized by this paragraph. If other lenders have liens on this marginal land, the lenders must release their liens before or simultaneously with FmHA's release of liens. No additional liens can be placed on the marginal land and timber after the closing of a ST loan.

III. Interest Rate For ST Loans

See Exhibit B of FmHA Instruction 440.1 for the applicable interest rate (available in any FmHA office). The interest rate will be the lower of (1) the rate of interest on the original loan which has been deferred and reamortized as the ST loan or (2) the Exhibit B rate.

IV. Special Requirements

(A) Size of The Timber Tract

The minimum parcels of marginal land selected as a tract for softwood timber production must be contiguous parcels of land containing at least 50 acres. Small scattered parcels will be excluded.

(B) Farm or Residence Situated in Different Counties

If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm, the loan will be serviced by the county office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(C) Graduation of ST Borrowers

If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, the borrower will, upon FmHA request, apply for and accept such financing.

V. Planning

A farm plan will be completed as provided in Subpart B of Part 1924 of this chapter. The State Director will supplement this subpart with a State supplement to guide the County Supervisor regarding the sources available to obtain a Timber Management Plan. The required Timber Management Plan developed with the assistance of the FS, State Forest Service or such other State or Federal agencies or qualified private forestry service should provide management recommendations to assist the borrower in establishing, managing and harvesting softwood timber. Borrowers are responsible for implementing the Timber Management Plan.

VI. Distressed Reamortized Loan Approval or Disapproval

County Supervisors are authorized to approve or disapprove the reamortization of distressed FmHA loans as described in this section. No more than 50,000 acres nationwide can be placed in the program. Acres for the program will be allocated to borrowers on a first-come, first-serve basis. "Administrative Notices" containing reporting requirements will be issued to field offices so that the National Office can keep a tally of the acres placed in the program. The County Supervisor will obtain a verification from the State Director that the acres can be allocated to the program prior to approval of the reamortization of the distressed FP loan(s). Normally, the verification of allocated acres will be obtained when the loan docket is complete and ready for approval. Loans for the program will not be approved until a confirmation is received for the allocation of acres for the loan(s). When a reamortization is approved, the County Supervisor will notify the borrower by letter of the approval of the ST loan(s). The FmHA Finance Office will be notified by the County Supervisor by completing Forms FmHA 1965–22 and 1965–23 for entry into the field office terminal system.

VII. Reamortizing Disapproval

When a reamortization is disapproved, the County Supervisor will notify the borrower in writing of the action taken and the reasons for the action, and include any suggestions that could result in favorable action. The borrower will be given written notice of the opportunity to appeal as provided in § 1951.911(c) of this subpart after the County Supervisor has determined whether the

borrower is eligible for the remaining servicing programs authorized by this subpart.

VIII. Processing of ST Loans

(A) If the reclassified ST loan is approved, all other FmHA loans must be current on or before the date the reclassified ST notes are signed except for FmHA-authorized recoverable cost items that cannot be rescheduled or reamortized. All other delinquent loans including NP loans will be rescheduled, reamortized, consolidated, deferred or paid current as applicable to bring the borrower's account current.

(B) ST loans on the dwelling. If the only liens on the borrower's dwelling are the reclassified ST loans, the borrower must make payments on the loan(s):

(1) The total of which will be at least equal to the market value rent for the dwelling as determined by the County Supervisor, or

(2) The minimum equally amortized installment for the term of the loan, whichever is less. Such payments cannot be deferred and will be shown in the promissory note as a regular scheduled payment for the reclassified ST loan.

(C) Form FmHA 1940–18, "Promissory Note for ST Loans," will be used for ST loans. Form FmHA 1940–17, "Promissory Note," will be used for any remaining portion of a split distressed loan. The forms will be completed, signed and distributed as provided in the Forms Manual Insert.

(D) The County Supervisor will determine the amount of interest more than 90 days overdue that will be added during the deferral period for softwood timber loans. This interest will be repaid in equal payment amounts during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment amounts for the remaining period of the loan. The Forms Manual Insert (FMI) for Form FmHA 1940–17 has examples (IV, V, and X) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with this subpart.

(E) The following addendum will be typed, completed, signed by the borrower and attached to the promissory note:

Addendum For Deferred Interest For Softwood Timber Loans

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the above note. $_____ of each regular payment on the note will be applied to the interest which will accrue during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

_____
Borrower

(F) New mortgages on farm property or related assets must be filed unless otherwise excused from being filed by the State supplement. If a new mortgage or separate security agreement is taken, the new mortgage and/or security agreement should be filed and perfected in the manner described by the State supplement. In many cases a survey of the land securing the ST loan will be required.

(G) The borrower will obtain any required releases for previous mortgages from other lienholders and the County Supervisor will release any other FmHA liens in accordance with paragraph II(E) of this exhibit.

IX. Servicing

ST loans will be serviced in accordance with Subpart A of Part 1965 of this chapter with the following exceptions:

(A) ST loans will not be subordinated for any purpose.

(B) Security property for ST loans will not be leased except for softwood timber production as authorized by the ST loan.

(C) During the life of the ST loan, land designated for softwood timber production cannot be used for grazing or the production of other agricultural commodities, as defined in § 12.2(a)(1) of Subpart A of Part 12 of this chapter and which is in Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(D) ST loans will only be transferred as NP loans in accordance with Subpart A of Part 1965 of this chapter except in the case of the death of the borrower. Deceased borrower cases involving transfers will be handled by FmHA in accordance with Subpart A of Part 1962 of this chapter.

(E) Land designated for softwood timber production under this subpart must remain in the production of softwood timber for the life of the loan. If the trees die or are destroyed or the production of timber ceases, as recognized by acceptable timber management practices, and the borrower is unable to develop feasible plans for the reestablishing of the timber production, the account will be liquidated in accordance with the provisions of Subpart A of Part 1965 of this chapter. *Any appeal to FmHA must be concluded before any adverse action can be taken on the loan.*

(F) The Timber Management Plan will be updated and revised, as needed, every five years or more often if necessary.

(G) Harvesting softwood timber for Christmas trees is prohibited.

(H) An ST loan will only be reamortized if:

(1) The timber is not harvested in the year stated in the initial promissory note, and

(2) The borrower is unable to pay the note as agreed.

Interest charges more than 90 days overdue will be capitalized at the time of the reamortization. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

X. State Supplements

State supplements will be issued immediately and updated as necessary to implement this section.

Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Set-Aside Easements)

I. General

A conservation easement will be considered with primary loan servicing actions in accordance with § 1951.906 of this subpart and the requirements of this exhibit. These easements can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, upland or highly erodible land. Such land must be suitable for the purposes involved and, except in the case of wetland and wildlife habitat as defined in paragraph (a) of this section, must have been row cropped each year of a three-year period ending on December 23, 1985. This section only applies to farmer program loans closed prior to December 23, 1985. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) Conservation Purposes

These include protecting or conserving any of the following environmental resources or land uses:

(a) "Wetland," except when such term is part of the term "Converted wetland," is land that Soil Conservation Service (SCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) "Hydric soils" means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) "Hydrophytic vegetation" means a plant growing in—

(*A*) Water; or

(*B*) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) "Highly erodible land" is land that SCS has determined has an erodibility index of 8 or more.

(c) "Upland" is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land and/or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of a wetland,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers' land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that SCS determines contains soil(s) that is generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the SCS's Land Capability Classification System.

(d) "Wildlife habitat" is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) Enforcement authority

Any agency of the United States, a State, or a unit of local Government of a State or a person that is designated by FmHA and specified within an easement area to enforce the terms and conditions of that easement.

(3) Management Authority

Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by an enforcement authority to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of an easement and/or its management plan. The borrower whose land is subject to the easement may be eligible to be designated as a management authority.

(4) Person

Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(5) Recreational Purposes

These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise(s).

(6) Row Cropped

The term refers to growing agricultural products, including small grains, by the annual tilling of the land (including one trip planters and sugar cane). This farming approach refers to land that was in grasses and/or legumes as part of a commonly practiced row crop rotational system in the local area as well as land that was set aside, diverted or otherwise not cultivated under a program administered by USDA to reduce production of an agricultural product or to conserve soil and water.

(7) Wildlife

The term includes fish and/or wildlife and means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrae, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(8) Wildlife Purposes

These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation easement. If the borrower is found to be ineligible, the FmHA County supervisor will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the easement after a final decision is made on whether the borrower qualifies for any other servicing options. The County Supervisor must find that:

(1) The borrower owns real estate which secures a farmer program loan which was closed before December 23, 1985;

(2) The borrower is or would be unable to repay the FmHA loan(s) without the easement agreement. This decision will be made by the borrower's submission of a plan of operation acceptable to FmHA for the current and coming year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(3) The establishment of an easement, in terms of the approximate amount of acres that may qualify, and in combination with other servicing options, if applicable, has the potential to allow the borrower to be current in payments, i.e., the easement approach is worth exploring in further detail;

(4) The proposed easement land except in the cases of wetland and wildlife habitat was row cropped each year of the three-year period ending on December 23, 1985; and

(5) If the land being proposed for the easement is within the Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing Easement Review Team

The County Supervisor will establish an easement review team by notifying the appropriate field offices of the Soil Conservation Service (SCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, National Park Service, Forest Service (FS), State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be an enforcement authority for an easement. The notified parties may in turn notify other eligible entities. SCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the County Supervisor will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on an easement review team.

IV. Responsibilities of the Easement Review Team

SCS will lead the easement review team which in every case will be composed of an SCS and FmHA representative (and in the case of wetlands, the U.S. FWS), plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder(s) and the borrower will be informed of the site visit time/date and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the county Supervisor. The report will cover the items listed in paragraphs (A) through (F) of this paragraph. The report will be prepared by an organization, selected by FmHA, that has indicated its willingness to be the enforcement authority except in the instance discussed in paragraph (c) below. Whenever review team members have differing positions on any items to be addressed in the report, each team member will prepare a separate report and submit these reports to the organization responsible for the report. These differing views will be noted in the report. When no differences exist within the review team, written summaries of team members' positions need not be submitted to the preparer of the report unless either the preparer requested them or an individual team member desires to submit a report. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, easement boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable easement boundaries or are required for the efficient management of the easement's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation and/or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked. First, priority will be given to land easement opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and

endangered species) and tbeir habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land easements already established or under review within the local area and the intent of these easements has been established, the review team will consider these actions as purpose rankings are developed.

(C) The name of the qualified enforcement authority which is willing to be assigned enforcement authority for the easement as well as the name(s) of any entity(s), if known, that the enforcement authority may use to manage the easement. Whenever more than one qualified entity desires to be the enforcement authority, the report will be prepared by SCS and will indicate this fact.

(D) If appropriate, any special terms or conditions that would need to be placed on the easement plus unique or important features of the property which would not be adequately addressed by the standard easement terms and conditions.

(E) A proposed management plan consistent with the purpose or purposes for which the easement would be established. The management plan will outline the various management alternatives for the proposed easement. The enforcement authority's eventual selection of the alternative(s) to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the easement. This management plan will specifically recommend whether or not public recreational use and/or public hunting should be allowed on the easement and provide supporting reasons for the recommendation(s) made. Whenever changes are required in the management plan, the enforcement authority, with the concurrence of FmHA, may update the management plan to reflect the changes.

(F) The recommended term length of the easement. See paragraph VI of this exhibit.

V. FmHA's Review of Easement Team's Report

Upon receipt, the County Supervisor will review the easement team's report. If the report indicates that an easement is not feasible given the nature of the land, or the failure of a qualified entity to volunteer to become an enforcement authority, the County Supervisor will inform the borrower of the reason(s) that the easement has been denied and that the borrower may appeal the denial of the easement. If the report is favorable to an easement and more than one qualified entity has indicated its desire to be an enforcement authority, the county Supervisor will select a Federal entity over a non-Federal entity since the easement involves reduction of a Federal debt. If two Federal agencies each want to be the enforcement authority, the County Supervisor will select the Federal agency that owns or controls property adjacent to the easement or the Federal agency whose mission or expertise best matches the priority use purposes(s) for which the easement would be established. In selecting between non-Federal entities, the county Supervisor will select the entity that has the greatest capability to enforce the terms and conditions of the easement during the proposed term of the easement.

VI. Terms of Easements

A conservation easement may be obtained for a period of not less than 50 years. A longer period of time or a perpetual easement shall be established if the easement review team determines that there is justification for extending the conservation easement past the 50-year minimum. Justification will exist if the easement would:

(A) Contribute directly to achievement of benefits to species protected by international treaty (e.g. migratory birds);

(B) Contribute directly to protection of habitat or restoration of habitat or benefit to threatened, endangered and/or candidate species;

(C) Serve as the site for wildlife habitat improvements which may be required to offset the unfavorable impact of a permit, license or project; when improvements need to be longer than 50 years;

(D) Serve as the site for substantial investment of public or private funds in order to achieve stated resource conservation and/or management purposes;

(E) Be desirable that property be removed from production for a long period due to the type of land; or

(F) Serve as a significant historical site, ground water recharge area or other significant eligible easement objective.

VII. Determining the Amount of Farmer Program Debt That Can Be Cancelled

(A) *Calculate the amount of debt to be cancelled as follows:*

(1) *Step 1.* Determine what percent the number of easement acres is of the total acres of land that secures the borrower's farmer program loans by dividing the easement acres that secure the borrower's farmer program loans by the total acres that secure the borrower's farmer program loans.

(2) *Step 2.* Determine the amount of farmer program debt that is secured by the easement acreage by multiplying the borrower's total unpaid farmer program loan balance (principal, interest and recoverable costs already paid by FmHA) by the percentage calculated in Step 1.

(3) *Step 3.* Determine the current value of the land in the easement by multiplying the present market value of the farm that secures the borrower's farmer program loans by the percent calculated in Step 1.

(4) *Step 4.* Select the lesser of the values calculated in Steps 2 and 3.

(5) *Step 5.* Subtract the current value of the easement acres in Step 3 from the farmer program debt that is secured by the easement acres in Step 2.

(6) *Step 6.* Select either the value arrived at in Step 4 or 5, whichever is the greater.

An Example For Determining The Amount That Can Be Cancelled:

Situation		
Total Acres		300
Easement Acres		60
Amount of unpaid farmer program debt secured by farm debt secured by farm.	pro-	$450,000
Current value of farm		$300,000
Step 1. 60 easement acres/300 total acres.	=	20 percent.
Step 2. $450,000 debt x 20 percent, Step 1.	=	$90,000
Step 3. $300,000 value x 20 percent, Step 1.	=	$60,000
Step 4. Select the lower amount of Step 2 or Step 3 Calculations.	=	$60,000
Step 5. $90,000 in Step 2—$60,000 in Step 3 Amount FmHA is undersecured on Easement Land.	=	$30,000
Step 6. Select the greater of Step 4 or 5.	=	$60,000

$60,000 of the debt would be the maximum amount available for the debt cancellation.

(B) *Feasibility of debt cancellation.* The County Supervisor will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VI) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum value as calculated in paragraph (VI) Step 6 of this section. If the borrower would not be able to develop a feasible plan, the County Supervisor will notify the borrower of the reason that the easement has been denied and that the borrower may appeal this adverse decision after the County Supervisor has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(C) *Updating the title opinion.* Title examination will be the same procedure as provided for in § 1807.2 (a) and (b) of Part 1807 of this chapter (FmHA Instruction 427.1). A preliminary title opinion will not be required. The final title opinion will cover the period following the recordation of the initial loan mortgage. Title opinion costs will be considered nonrecoverable costs and will be paid by FmHA by completing and submitting a Standard Form 1034 and plus a Form FmHA 2024–1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024 (instructions and forms are available in any FmHA office).

(D) *Consent of other lienholders.* If there are any prior or junior lienholders, their consent to the terms of the easement must be obtained in writing by the borrower. The consent will be filed in the borrower's case file and need not be recorded unless required by State law. No change in the terms can be

proposed by the prior or junior lienholders. If it is not possible to obtain the lienholders' consent, the easement will be denied and the borrower so informed. The borrower will have no appeal rights for an FmHA denial on this basis.

(E) *Identifying the boundaries of the easement.* A professional survey of the easement's boundaries will be required. FmHA will provide this service by contracting for the survey in accordance with FmHA Instruction 2024–A, Exhibit J (available in any FmHA office).

(F) *Reaching an agreement with the borrower.* The borrower will be informed of the easement's value, the impact on the remaining financial obligation, and the terms and conditions of the easement. The borrower also will be provided a copy of the easement review team's report. If the borrower decides to give the easement, approval will be made by the County Supervisor, the enforcement authority, and the borrower by signing Form FmHA 1951–39, "Grant of Easement," if the enforcement authority is the U.S. Fish and Wildlife Service, or Form FmHA 1951–39A, "Grant of Easement," if the enforcement authority is other than the U.S. Fish and Wildlife Service, or a similar form approved by the Office of General Counsel (OGC). A similar form may not contain provisions which conflict with this regulation or with the terms of Forms FmHA 1951–39 or 1951–39A. If the borrower requests a modification of the proposed easement, such modification cannot conflict with the purpose or purposes for which the easement would be established. The County Supervisor cannot approve a modification of the proposed easement's terms and conditions without first obtaining the concurrence of the enforcement authority. If the modification is substantial, in terms of the easement review team's recommendations, the members of the easement review team must be consulted. If an agreement cannot be reached with the borrower on the easement's terms and conditions, the County Supervisor will notify the borrower in writing that the easement is denied and that the borrower may appeal this denial.

(G) *Recording of noncash credit.* Upon approval of the easement, the County Supervisor will complete Form FmHA 1951–47, "Farmer Program Noncash Credit for Purchase of Easement Rights," for entry into the FmHA field office terminal system. The borrower's loans that were closed prior to December 23, 1985, that are secured with the real estate on which the easement is obtained, will be credited with an amount not to exceed the established value of the easement acres. The amount credited will be applied on the FmHA loan(s) in order of priority of lien on the security and then on any other FmHA debts. The loan may be reamortized if needed.

(H) *Recording of the easement.* The County Supervisor will record Form FmHA 1951–39 or Form FmHA 1951–39A (or other acceptable form that has been approved by OGC) to comply with State laws. The County Supervisor then will retain a copy of the easement in the borrower's file and will provide a copy of the easement to the enforcement authority and to the borrower. Cost of recording the easement will be considered a nonrecoverable cost and will be paid by FmHA by completing a Standard Form 1034 and submitting Form FmHA 2024–1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024–P (instructions and forms are available in any FmHA office).

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the easement, the account will be liquidated in accordance with § 1965.26(b) of Subpart A of Part 1965 of this chapter. The borrower will also be responsible for all costs incurred by FmHA in the course of enforcing such terms and conditions. Enforcement expenses may include attorney's fees, costs of any litigation, and the cost of repair or restoration of the easement land to a condition compatible with conservation, recreational and wildlife purpose(s) for which the easement was established. Should the borrower wish to convey or sell the property subject to the easement during the term of the easement, the borrower must first notify the enforcement authority and the purchaser(s) will also be responsible for the same type of costs should the successor(s) violate the terms and conditions.

IX. Responsibilities of the Enforcement Authority

The enforcement authority will be named in any approved easement and once named agrees to accept the following responsibilites and duties:

(A) Upon receipt of an FmHA approved easement, provide FmHA with a legally binding document acknowledging its acceptance of the role as enforcement authority for that easement.

(B) Monitor compliance with the easement's terms and conditions.

(C) Ensure that the easement property is safely maintained to the extent required by relevant State law and accept all liabilities associated with implementing and carrying out its management responsibilities under the easement's terms and conditions and management plan.

(D) At its discretion, delegate or contract management functions to one or more management authorities, with all associated cost being the responsibility of the enforcement authority or the management authority, as agreed in that contract. Monitoring Compliance with the terms and conditions of the easement cannot be so delegated or contracted.

(E) For the first five years of the easement's life, report annually to FmHA on the status of compliance with the easement's terms and conditions. Thereafter, this report must be provided every five years. If circumstances develop which would result in substantial compliance problems or claims, or litigation involving the easement property, then the enforcement authority immediately must notify FmHA by certified letter.

X. Monitoring Compliance

The enforcement authority is responsible for monitoring compliance with the easement's terms and conditions and management plan. However, when under the circumstances stated in the easement's terms and conditions (Form FmHA 1951–39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the County Supervisor. In order to provide the requested written authorization, the County Supervisor must determine that the request does not violate the easement's terms and conditions and must receive the written concurrence of the enforcement authority. In reaching this determination, the County Supervisor should consult with the State Director and OGC, as necessary.

Exhibit I—Farmer Program Dwelling Retention

I. General

This exhibit contains the policies and procedures pertaining to the Farmer Program Dwelling Retention Program. Dwelling Retention is a "Preservation Loan Service Program" as set forth in Subpart S of Part 1951 of this chapter. A borrower or former borrower who had or has a Farmer Program loan secured by the real property which contains the dwelling which was used as the borrower's principal residence may apply in writing for Dwelling Retention before or after FmHA acquires the property. Farm real property that is in FmHA inventory as of the effective date of this regulation or is acquired in the future that secured a Farmer Program loan to individuals or entities will be considered for dwelling retention under this Exhibit. If there is a conflict between applicants for Leaseback/Buyback (see Exhibit J to this subpart) and Dwelling Retention, priority will be given to the application for Dwelling Retention. An applicant can apply for both Dwelling Retention and Leaseback/Buyback at the same time. The applicant can obtain the Dwelling Retention property under the Dwelling Retention Program and the balance of the farm under Leaseback/Buyback Programs.

II. Introduction

This Exhibit provides the requirements for participation in the Dwelling Retention Program. It also provides information that is necessary to administer the provisions of the Dwelling Retention Program.

III. Definitions

A. Dwelling Retention

This refers to the right of a Farmer Program borrower to lease with an option to purchase the Dwelling Retention property.

B. Dwelling Retention Property

This refers to a borrower's principal residence which secured a Farmer Program loan. The property will also include not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the dwelling.

C. Farmer Program Loans

This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special

Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

D. Market Value

The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

IV. Processing Dwelling Retention

A borrower who desires to participate in the program must request Dwelling Retention by notifying the County Supervisor in writing within the time limits set forth in this Exhibit. The borrower will be allowed to retain possession and occupancy of the Dwelling Retention Property while an application for Dwelling Retention is being processed. A borrower who meets the eligibility requirements in Paragraph V of this Exhibit will be permitted to retain possession of FmHA Dwelling Retention Property under a lease with an option to purchase.

A. Determining Dwelling Retention Property

1. When the borrower informs the County Supervisor of his or her intention to participate in the Dwelling Retention Program, the borrower will also inform the County Supervisor of the buildings and property the borrower intends to include in the Dwelling Retention property. The Dwelling Retention property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm outbuildings located on land adjoining the residence which are useful to the occupants of the dwelling.

2. The County Supervisor will review the borrower's proposed Dwelling Retention property and will make a physical inspection of the proposed Dwelling Retention property if necessary. If the County Supervisor does not agree with the proposed Dwelling Retention property, the County Supervisor will provide an alternate proposed Dwelling Retention property.

3. If the borrower does not agree with the County Supervisor's proposed Dwelling Retention property, the borrower may appeal pursuant to Subpart B of Part 1900 of this chapter.

4. When the size and shape of the Dwelling Retention property are determined, the County Supervisor will have a legal description of it prepared. The cost of preparation of the legal description of the Dwelling Retention property will be handled in accordance with Paragraph VIII B of this Exhibit.

B. Processing Dwelling Retention Before FmHA Acquires Title

1. A borrower may apply for Dwelling Retention in writing to the County Supervisor at any time before FmHA takes the Dwelling Retention property into inventory. A borrower who applies for Dwelling Retention before the borrower voluntarily conveys the Dwelling Retention property to FmHA or before FmHA forecloses or otherwise takes action to acquire the property, will be considered for eligibility for Dwelling Retention at the time of application. If the County Supervisor determines the borrower is eligible for Dwelling Retention, the County Supervisor and the borrower will enter into an Agreement (Attachment 2 of this Exhibit) to lease the Dwelling Retention property to the borrower if and when FmHA acquires title. A copy of Form FmHA 1955–20, "Lease of Real Property," will be attached to the Agreement as an Exhibit.

2. The agreement will provide that FmHA's obligation to enter into a lease of the Dwelling Retention property is contingent on FmHA acquiring fee title to the Dwelling Retention property.

3. FmHA's obligation to lease the dwelling to the borrower will also be contingent on FmHA's prior compliance with all local laws, ordinances and regulations governing the subdivision of land. The agreement will contain a provision that if FmHA cannot satisfy the foregoing conditions within 2 years from the date of the agreement, the agreement (and FmHA's obligation to lease with option to purchase) will end.

4. Prior to FmHA taking action to acquire the Dwelling Retention Property by foreclosure or otherwise, a borrower will be notified about Dwelling Retention with Attachment 1 of Exhibit A of this subpart, "Farmers Home Administration Notice of Primary and Preservation Loan Service Programs for Delinquent Borrowers."

C. Processing Dwelling Retention After FmHA Acquires Title

When FmHA acquires title to the farm property, the borrower will be sent Attachment 1 of this Exhibit, by certified mail, return receipt requested, within 30 days from the date FmHA acquired the Dwelling Retention Property. The borrower must request Dwelling Retention by notifying the County Supervisor in writing not later than 90 days after FmHA acquires the property.

D. Lease with Option

A lease with an option to purchase will be entered into with an eligible borrower on Form FmHA 1955–20 after FmHA acquires title to the property. Form FmHA 1955–20 will be completed in accordance with the requirements in this Exhibit and the FMI.

V. Eligibility

The County Supervisor will make the determination on eligibility. In order to qualify for Dwelling Retention the borrower must meet the following eligibility requirements:

A. An applicant for Dwelling Retention must be an individual who is or was personally liable for the Farmer Program loan that was secured in part by the Dwelling Retention Property. The applicant must also be or have been the owner of the Dwelling Retention Property. The Farmer Program loan could have been made to an individual or to an entity, as long as the applicant for Dwelling Retention was a member of the entity and was personally liable for the Farmer Program loan. A member of an entity who is or was personally liable for a Farmer Program loan that is or was secured by the Dwelling Retention Property is considered an owner for Dwelling retention purposes.

B. When more than one member of an entity was personally liable for a Farmer Program loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for a Farmer Program loan, may apply separately for Dwelling Retention of their individual dwellings.

C. The applicant and any spouse must have received from the farming or ranching operations gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6 year period preceding the calendar year in which the application is made. For the purpose of this subparagraph and subparagraph D below, income from farming or ranching operations will include rent paid to the borrower by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, was unable to actively farm that property.

D. The applicant and any spouse must have received from the farming or ranching operations at least 60 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 of the 6 calendar years preceding the calendar year in which the application for Dwelling Retention is made.

E. The applicant must have continuously occupied the Dwelling Retention Property during the 6 year period preceding the calendar year in which the application is made, unless the applicant had to leave the property for a period of time not to exceed 12 months during the 6 year period due to circumstances beyond the borrower's control.

F. The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition. The applicant must also agree to all the terms and conditions set forth in this Exhibit and in Form FmHA 1955–20.

VI. Transfer of Dwelling Retention Rights

The applicant's rights to Dwelling Retention and rights under the lease entered into pursuant to this Exhibit are not transferable or assignable by the applicant or by operation of law, except that in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse of the applicant if the spouse agrees to comply with the terms and conditions of the lease by executing a new lease on the same terms and conditions.

VII. Appeal Rights

If the County Supervisor determines that the applicant is not eligible for dwelling retention, or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded.

VIII. Property Requirements

A. The proposed Dwelling Retention Property tract must meet all requirements for the division of the Dwelling Retention property into a separate legal lot as required by State and local laws. All environmental considerations required under the provisions of Subpart G of Part 1940 of this chapter will be complied with.

B. Any survey, legal description and other services needed to create the Dwelling Retention Property as a separate legal lot will be obtained and paid for by FmHA. Such costs will be handled in accordance with paragraph XI C of this Exhibit if the property is in inventory and in accordance with § 2024.753(c) of FmHA Instruction 2024–P (available in any FmHA office) if the property is not in inventory.

C. The lease will cover the Dwelling Retention Property.

D. If necessary, FmHA will retain for itself and for the benefit of the adjoining farm property reasonable easement(s) over the Dwelling Retention Property for ingress, egress and utilities between the remaining inventory property and public right-of-way.

IX. First Appraisal

The fair market value of the Dwelling Retention Property shall be determined by an independent appraisal requested by the County Supervisor and made within six months from the date of the borrower's application for Dwelling Retention. The cost of such appraisal will be handled in accordance with paragraph XI C of this Exhibit if the property is in inventory. If the property is not inventory, the cost will be handled in accordance with § 2024.753(c) of FmHA Instruction 2024–P (available in any FmHA office).

X. Terms of the Lease and Exercising the Option

A. All leases will have an option to purchase. Any reference to a lease for Dwelling Retention purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form FmHA 1955–20 and will be for a period of not less than 3 years nor more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

1. The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document a sufficient number of equivalent rents charged in the area for such properties to support the lease amount in the case file.

2. Lease payments will be retained by the Government and remitted in accordance with FmHA Instruction 1951–B.

3. Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling retention property under this section. As soon as a lease payment is delinquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights of the lessee to possession and occupancy of the property including the right to exercise the option to purchase will be terminated. The County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to Subpart B of Part 1900 of this chapter. FmHA will comply with all applicable State and local laws governing eviction from residential property.

4. Any interference by the lessee with the Government's efforts to lease or sell the remainder of its farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase under this Exhibit. This stipulation will be added to the lease.

B. Exercising the Option to Purchase

1. The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed, written statement notifying FmHA that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

2. When the lessee exercises the option in the lease to purchase the property, the purchase price will be the then current market value of the dwelling retention property as determined by a second appraisal as set forth in paragraph XI of this Exhibit.

3. The Dwelling Retention Property may be sold for cash or credit sale. At the time the lessee exercises the option the lessee must notify the County Supervisor if he or she wants to purchase the property as a credit sale from FmHA.

4. If a credit sale is involved, the applicant must furnish necessary financial information to assist the County Supervisor in determining whether or not the applicant has adequate repayment ability. Form FmHA 431–2, "Farm and Home Plan," or Form FmHA 431–3, "Household Financial Statement and Budget," or another acceptable format, as appropriate, to establish repayment ability will be required from the applicant.

XI. Second Appraisal

A. Independent Appraisal

The current market value will be determined by an appraisal made by an independent real estate appraiser selected by the lessee from a list of at least three appraisers approved by the County Supervisor.

B. List of Appraisers

The County Supervisor will develop and maintain, in the County Office operational file, a list of at least 3 qualified independent appraisers.

C. Cost of Appraisal

The cost of the appraisal for the Dwelling Retention inventory property will be charged to the inventory property account for the entire farm as a nonrecoverable cost in accordance with § 2024.753(b) of FmHA Instruction 2024–P (available in any FmHA office).

D. Appeal

Independent appraisals are appealable

XII. Rates and Terms for a Credit Sale

Terms for a credit sale of Dwelling Retention Property when the lessee is exercising the option to purchase and has qualified for a credit sale will not exceed 35 years with equal amortized monthly installments. No down payment will be required. The interest rate for Dwelling Retention will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

XIII. Closing

A credit sale will be closed in accordance with Subpart C of Part 1955 of this chapter.

XIV. Conflict with State Law

In the event of a conflict between a borrower's Dwelling Retention rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement this Exhibit, with the advice of OGC, and forwarded to the National Office for prior or post approval.

XV. Exception Authority

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator, or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

XVI. State Supplements

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

Attachment 1—Dwelling Retention Program Letter

United States Department of Agriculture, Farmers Home Administration

(Insert Address)

Notice of the Availability of Dwelling Retention

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FmHA acquired the farm which was security for your FmHA loan. FmHA has a program called the Dwelling Retention Program under which you may be allowed to lease (with an option to purchase) the house which was your principal residence, a reasonable number of farm outbuildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Dwelling Retention Program, you must notify this office in writing by [date 90 days from acquisition date].

If you would like more information about the Dwelling Retention Program, you may contact the County Supervisor at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Dwelling Retention Program.

Sincerely,

_____

County Supervisor

Attachment 2—Dwelling Retention Program Agreement

Agreement

This agreement is entered into this _____ day of _____, 19 __, by and between the Farmers Home Administration (FmHA) of the United States Department of Agriculture and _____ ("Borrower").

A. Borrower has received a loan or loans from FmHA secured by real property which includes the Borrower's dwelling, adjoining land that is used to maintain the Borrower and the Borrower's family, and one or more outbuildings that are useful to the Borrower and the Borrower's family (the Dwelling Retention property).

B. Borrower's FmHA loan is in default and FmHA has commenced action to foreclose or otherwise acquire all the real property which secures FmHA's loan(s) including the Dwelling Retention property.

C. Borrower wants to continue to occupy the Dwelling Retention property after FmHA acquires title to it.

D. FmHA has already determined that Borrower has satisfied the requirements for its Dwelling Retention Program.

E. FmHA agrees to permit Borrower to retain occupancy of the Dwelling Retention property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FmHA agrees to lease the Dwelling Retention property, as more particularly described in Exhibit A attached hereto, to Borrower on the terms and conditions set forth in the lease attached hereto as Exhibit B (the "lease"). Borrower agrees to enter into the lease of the Dwelling Retention property.

2. FmHA's obligation to enter into the lease of the Dwelling Retention property is subject to the occurrence of the following conditions:

a. FmHA acquires fee title to the Dwelling Retention property in connection with the liquidation of the farm property of which the Dwelling Retention property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Dwelling Retention property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent to be charged Borrower during the term of the lease will be determined by FmHA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. This rental amount will be inserted in the lease prior to signing.

6. Borrower agrees to cooperate with FmHA in applying for and securing whatever local governmental approvals are necessary in order for the Dwelling Retention property to be a separate legal parcel. FmHA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not started on or before 2 years from the date of the agreement, the agreement shall end and be of no further force or effect.

Farmers Home Administration
Borrower:

_____

_____

By: _____

Exhibit J—Farmer Programs Leaseback/Buyback

I. General

A. Introduction

This Exhibit contains the policies and procedures pertaining to the Farmer Programs Leaseback/Buyback Program. The Farmer Programs Leaseback/Buyback Program will permit the previous owner of real property that was security for a Farmer Programs loan(s) to have the first opportunity to lease or purchase that property from FmHA. The previous owner will be informed of leaseback/buyback rights after the property is taken into inventory. If the previous owner wants to participate in the leaseback/buyback program, it is the previous owner's decision as to whether he or she will lease or purchase the property. If the previous owner is not interested in leasing or purchasing the property, preference for leaseback/buyback will be given to the (1) spouse and/or child(ren) of the previous owner who are actively engaged in farming (if the previous owner was an individual); (2) entity members (if the previous owner is an entity that is composed exclusively of members of the same family) who are actively engaged in farming; and (3) the immediate previous family-size operator (lessee).

B. Scope

Leaseback/buyback is applicable to property which was security for loans made under Consolidated Farm and Rural Development Act (CONACT) 7 U.S.C. 1921 *et. seq.* It also covers property which secured loans made pursuant to the Agricultural Credit Act of 1978, the Emergency Agricultural Credit Adjustment of 1978, and the Emergency Agricultural Credit Act of 1984. (See definition of Farmer Programs loans.)

The rights afforded individuals under the leaseback/buyback program will only be offered once. If a previous owner, previous owner's spouse or child, an entity member (if the previous owner was an entity held exclusively by members of the same family), or immediate previous family-size operator (lessee) leases the property and does not exercise the option to purchase and the lease terminates, no other individuals will be offered the property under the leaseback/buyback program. These individuals, however, may lease or purchase the property when it becomes available for lease or sale in accordance with Subparts B and C of Part 1955 of this chapter.

Leaseback/buyback is a "Preservation Loan Service Program" as set in Subpart S of Part 1951 of this chapter CONACT property that is acquired on or after January 6, 1988, that secured an FmHA loan will be considered for leaseback/buyback under this Exhibit. CONACT property acquired for prior to January 6, 1988, will also be considered under this section, but only if the former owner/previous operator was not advised of his or her leaseback/buyback rights under FmHA's previous leaseback/buyback regulation. If there is a conflict between leaseback/buyback and FmHA's Dwelling Retention program (see Exhibit I of this subpart) priority will be given to the application for Dwelling Retention with respect to the lease of the borrower's principal dwelling.

The authorities contained in this Exhibit supplement Subparts A, B and C of Part 1955 of this chapter and provide information that is necessary to administer the leaseback/buyback program. This Exhibit does not apply in the case where the security property is located within an Indian reservation *and* the owner is either the Indian tribe that has jurisdiction over the reservation in which the security is located or the owner is a member of such Indian tribe.

C. Definitions

1. Child

The son or daughter or a previous owner of property that has been acquired by FmHA and who is of legal age to enter into a binding contract.

2. CONACT or CONACT Property

Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this Exhibit, it shall also be construed to cover property which secured other Farmer Programs loans.

3. Entity

A corporation, partnership, or joint operation, or cooperative. The members, or partners of the entity must be entity members.

4. Entity Members

For purposes of leaseback/buyback, entity members are stockholders of a corporation, partners of a partnership, joint operators of a joint operation and members of a cooperative, provided that the shareholders of the corporation, partners of the partnership, joint operators of a joint operation or members of a cooperative must be exclusively members of the same family. All family members of an entity must be related by blood or marriage.

5. Farmer Program Loans

This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operation (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

6. Government

The United States of America acting through Farmers Home Administration (FmHA, U.S. Department of Agriculture; used interchangeably herein with "FmHA").

7. Inventory Property

For purposes of leaseback/buyback this refers to real property which secured a Farmer Programs loan to which the Government has acquired title.

8. Owner

An individual or an entity which held the fee title to the security but who may or may not have operated the farm at the time it was taken into inventory. The owner need not have been an FmHA borrower in the sense that the owner was personally obligated on a loan from FmHA, but the owner must have pledged the farm as security for a CONACT loan.

9. Previous Operator

An individual or an entity who leased the farm which secured a CONACT loan and conducted the day to day business at the time the farm was taken into inventory.

10. Security or Security Property

This refers to the real property which secured a CONACT loan. If the security covers property which is subject to Dwelling Retention and if the individual who is eligible for Dwelling Retention is not the same individual who is offered leaseback/buyback rights, the security will not include the Dwelling Retention property if Dwelling Retention rights are exercised.

11. Suitable Property

Real Property that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, those general purposes for which FmHA makes real estate loans as set out in § 1943.24 of Subpart A of Part 1943 of this chapter, must be considered in classifying property. If a determination is made by the applicable county committee that FmHA may make a farm ownership (FO) loan on the property, it will be classified as suitable. This includes those farm properties that may be used as a start-up or add-on parcel of farmland. Leaseback/buyback rights will be offered in accordance with this Exhibit whether or not the property is considered surplus or suitable. For leaseback/buyback suitability is only considered if the credit sale is to be on eligible terms.

RIGHTS OF PREVIOUS OWNER AND NOTIFICATION

II. Processing Leaseback/Buyback Before FmHA Acquires Title

A. Prior to FmHA taking action to acquire the owner's CONACT property by foreclosure or otherwise, an owner will be notified about the leaseback/buyback program by sending Attachment 2 of this Exhibit.

B. An owner may apply for leaseback/buyback at any time before FmHA acquires the owner's property, such application must be in writing. An owner who applies for Dwelling Retention before the owner voluntarily conveys his or her security to FmHA or before FmHA forecloses or otherwise takes action to acquire the security will be considered for eligibility for leaseback/buyback at the time of the Dwelling Retention application.

1. If the owner has requested leaseback and the County Supervisor determines that the owner is eligible for leaseback the County Supervisor and the owner will enter into an Agreement (Attachment 1 to this Exhibit) to lease the security to the owner if and when FmHA acquires title. A copy of Form FmHA 1955–20, "Lease of Real Property" will be attached to the Agreement as an exhibit. The Agreement will provide that FmHA's obligation to enter into a lease of the security is contingent on FmHA acquiring fee title to the security. The agreement will contain a provision that if the lease term does not begin within 2 years from the date of the Agreement, the Agreement (and FmHA's obligation to lease) will end.

2. If the owner has requested buyback of the property as a credit sale, the County Supervisor will determine if it is likely that the owner will have repayment ability and be deemed creditworthy at the time the security is taken into inventory. See paragraph IV B of this Exhibit. If the County Supervisor determines that the owner is not likely to meet the criteria for a credit sale he will notify the owner of this and this decision can be appealed.

If the County Supervisor determines that the owner is eligible for a credit sale when the security is taken into inventory, he will enter into a conditional credit sale with the owner. The following conditions will be inserted in the credit sale agreement:

"FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for credit worthiness and repayment ability at the time the credit sale is ready to close. The credit sale will close as soon as possible after FmHA acquires title to the security and any other contingencies are satisfied."

3. If the owner has requested buyback of the property by paying cash, the County Supervisor will enter into Form FmHA 1955–49, "Standard Sales Contract—Sale of Real Property by the United States," with the owner subject to the following contingencies which will be inserted in Form 1955–49:

4. Provided that the County Supervisor is notified in writing before FmHA has acquired title to the security, an owner who has elected leaseback can change to buyback and vice versa.

III. Processing Leaseback/Buyback After FmHA Acquires Title

A. Notification

If the previous owner has not entered into an agreement to purchase or lease the security prior to acquisition by FmHA, the County Supervisor will notify the previous owner about leaseback/buyback by use of Attachment 2 of this Exhibit within 30 days after FmHA acquires title to the security. Notification will be sent by certified mail, return receipt requested. The previous owner will be given 180 days from the date of acquisition, or applicable period under the state redemption laws to respond in writing to the County Supervisor if interested in purchasing or leasing the property. The owner must elect either leaseback or buyback by written notice to the County Supervisor prior to the expiration of the 180-day period.

B. Notification of Spouse and Child and Entity Members

The notification letter to an owner who is an individual will inform the owner that if the owner is not interested in leaseback/buyback the owner's spouse or children, if actively engaged in farming, may be eligible for leaseback/buyback. It will be the responsibility of the owner to inform his or her spouse and/or children about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition. If the owner was an entity and the owner is not interested in leaseback/buyback the notification letter will inform the owner it will be the responsibility of the owner to inform the entity members about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition. Entity members must be actively engaged in farming to be eligible for leaseback/buyback.

C. Notification of the Previous Operator

In the event the previous owner is not interested in the leaseback/buyback program, the notification letter sent to the previous owner will also request the previous owner to notify the County Supervisor if the security was operated by a lessee at the time it was taken into inventory and, if so, to

notify the County Supervisor of the name and address of that lessee.

If the previous owner provides FmHA with the name of the immediate previous operator (lessee), or if the County Supervisor is aware that the property was leased by the owner and knows the name and address of such immediate previous operator (lessee) the operator will be notified of leaseback/buyback by use of Attachment 3 of this Exhibit. This letter will be sent by Certified Mail, return receipt requested. The County Supervisor will send Attachment 3 to the operator (lessee) within 30 days after the 190-day period or applicable period under state redemption laws has expired. The County Supervisor, however, may notify the operator (lessee) prior to the 190-day period after acquisition of the property or applicable period under state redemption laws if the previous owner, spouse and/or child (if the former owner was an individual), and entity members (if the former owner is an entity) inform the County Supervisor, in writing, that they are not interested in purchasing or leasing the property. The operator (lessee) will be given 30 days from the date he or she is notified about leaseback/buyback to enter into a lease or Standard Sales Contract if he or she wishes to participate in leaseback/buyback.

D. The rights regarding the lease or purchase of property provided by this Exhibit and accorded a person or entity described above may be freely and knowingly waived by such person or entity.

IV. Priority

A. FmHA shall give priority for the leaseback/buyback program in the following order:

Priority 1. The immediate previous owner of the acquired property.

Priority 2. If actively engaged in farming,

a. The spouse or child of the previous owner if the previous owner was an individual;

b. If the previous owner was an entity, to the entity members of the corporation, partnership, joint operation or cooperative.

Priority 3. The immediate previous family-size farm operator of the security.

B. Within each of the foregoing priorities if there is more than 1 individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (one individual wants to purchase and the other individual wants to rent) priority within the category will be given to an individual who wants to purchase the security, either for cash or by credit sale. There is no preference for a cash sale over a credit sale. If there are 2 or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), priority will be determined by the County Committee. The County Committee will make their selection as to which individual has the greatest need for farm income and who best meets the criteria for eligibility for a Farmer Programs loan.

C. If there are individuals in different priority categories who inform the County Supervisor, in writing, of their intention to participate in the leaseback/buyback program, the County Supervisor will first consider the eligibility for leaseback/buyback of individuals in the highest priority in which there is interest before considering individuals in the lower priority. If an individual in a higher priority is eligible, the individuals in the lower priority will be notified by the County Supervisor that an individual with higher priority has been selected.

V. Leaseback Eligibility

An individual who is notified of the leaseback/buyback program, including the previous owner, who wants to lease the security must first be determined to have sufficient experience, management skills, and financial resources to assure a reasonable prospect of success in the farming operation. The County Supervisor will make this determination. In making this determination the County Supervisor will evaluate the individual's financial and production record (which the individual will make available to the County Supervisor). The County Supervisor will use these records to determine if any failure of an individual's previous operation was caused by factors beyond the individual's control such as natural disasters, inflated farm input costs, high interest rates, and/or prices received that were below reasonable costs of production. If the County Supervisor determines that the individual will be informed that he or she is not eligible for leaseback. The County Supervisor will give the individual the opportunity to appeal that determination in accordance with Subpart B of Part 1900 of this chapter. No lease will be signed with any prospective lessee and the property cannot be sold to an individual in the same or lower leaseback/buyback priority category until the appeal is concluded.

VI. Buyback Eligibility

A. An individual who is notified of the leaseback/buyback program, including the previous owner, will notify the County Supervisor that he or she wants to purchase the security (buyback). At the time of notification, the individual will indicate to the County Supervisor whether it will be a cash or credit sale.

B. *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan", should be used for all required information or another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for a Farmer Programs Farm Ownership loan. Individuals requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability.

VII. Processing Leaseback/Buyback

A. Contingency for Dwelling Retention

If the security which the individual who is selected for leaseback/buyback wants to lease or purchase is subject to Dwelling Retention rights by someone other that the selected individual, FmHA's obligation to enter into the lease or close the sale will be contingent on FmHA's prior compliance with all local laws, ordinances and regulations, if any, governing the subdivision of land. The Dwelling Retention property must be a separate, legal parcel. The Dwelling Retention property will be excluded from the leaseback/buyback property.

B. Leaseback

1. The County Supervisor can approve the lease of the security under the leaseback/buyback program.

2. The lease form will be Form FmHA 1955–20.

3. The terms of the lease will normally not exceed 1 year but in justifiable cases may be for a period not longer than 3 years.

4. All leases under the leaseback/buyback program will contain an option to purchase. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value at the time the option is exercised as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422–1, "Appraisal Report-Farm Tract." The lease payments will not be applied toward the purchase price.

5. *Rent.* Leaseback property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount. The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income. The amount of the rental will be determined by the County Supervisor. If the leaseback applicant disagrees with the proposed rental, the applicant can appeal in accordance with Subpart B of Part 1900 of this chapter.

C. Buyback

1. Credit Sale

The property will be offered on eligible terms (if the purchaser is eligible) and a credit sale processed in accordance with Subpart C of Part 1955 of this chapter or for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

2. Cash Sale

Title clearance and loan closing for cash sales will be handled in accordance with 7 CFR Part 1807 and the terms of Form FmHA 1955–49.

VIII. Miscellaneous

A. *Wetlands, floodplains and/or highly erodible land.* If the property contains lands that are wetlands and/or floodplains, the prospective lessee or purchaser will be informed by FmHA of its presence and location, along with the USDA restrictions

regarding its use, as set forth in Exhibit M of Subpart G of Part 1940 of this chapter and Subparts B and C of Part 1955 of this chapter. The provisions of a purchase agreement or a lease agreement for farm inventory property that is "highly erodible land," as determined by the Soil Conservation Service (SCS), must contain, as requirements of the lease or sale, conservation practices specified by the SCS and approved by FmHA as a condition of the lease or sale. If the land is under an Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program (CRP) contract, the purchaser/lessee shall assume the CRP contract. This requirement shall be included as a provision in all leases or sale documents entered into pursuant to the leaseback/buyback program.

B. *State laws and State supplements.* In the event of any conflict between any provisions of the FmHA leaseback/buyback program, as outlined in this Exhibit and any provisions of State law providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of land to any other person, such provision of the State law shall prevail. State supplements will be prepared with the assistance of the Office of the General Counsel as necessary, to comply with the State laws or as necessary, to provide guidance to FmHA officials.

C. Denial of applications for or disputes over terms and conditions of a lease or purchase agreement under the leaseback/buyback program, are appealable pursuant to Subpart B of Part 1900 of this chapter.

D. *Other provisions.* For additional guidance on the acquisition, management and sale of inventory farm property (CONACT property), the County Supervisor should refer to Subparts A, B and C of Part 1955 of this chapter.

Attachment 1—Agreement

This Agreement is entered into this _____ day of _____, 19___, by and between the Farmers Home Administration ("FmHA") of the United States Department of Agriculture and _____ ("Lessee").

A. Lessee is eligible for the FmHA leaseback program under 7 CFR Part 1951, Subpart S, Exhibit J, for the real property described on the enclosed Attachment 2 (the "leaseback property.").

B. FmHA has not yet acquired title to the leaseback property but agrees to lease it to Lessee on the following terms and conditions when FmHA acquires clear title to it:

1. Subject to the terms and conditions set forth below, FmHA agrees to lease the leaseback property to Lessee on the terms and conditions set forth in the lease, Form FmHA 1955–20. Borrower agrees to enter into the lease of the leaseback property.

2. FmHA's obligation to enter into the lease of the leaseback property is subject to the occurrence of the following conditions:

a. FmHA acquires clear title to the leaseback property in connection with the liquidation of the owner's interest in that property.

b. If someone other than the Lessee is eligible for and has or may exercise Dwelling Retention rights under 7 C.F.R. Part 1951, Subpart S, Exhibit I, the leaseback property will be reduced by the Dwelling Retention property. FmHA's obligation to lease the remaining leaseback property is contingent on FmHA's determination that all State and local laws, ordinances and regulations concerning the creation of the Dwelling Retention property as a separate legal parcel which can be leased have been satisfied.

3. The term of the lease will begin on the date the latter of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent will be an amount equal to that for which similar properties in the area are being leased. This amount will be determined prior to the execution of this agreement and the agreed upon rent entered in the lease form, Form FmHA 1955–20. If the Lessee disagrees with the rents determined by the County Supervisor, the Lessee can appeal this determination pursuant to 7 CFR Part 1900, Subpart B.

6. The property, upon acquisition by FmHA, will be subject to any USDA restriction regarding the use of property containing wetlands, floodplains and/or highly erodible lands.

7. If the lease term has not started on or before 2 years from the date of this agreement, the agreement will end.

Farmers Home Administration
Lessee
By: _____

_____
County Supervisor

_____

Attachment 2—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor To Advise a Owner/Former Owner Who Held Title to the Property of the Availability of Leaseback/Buyback)

United States Department of Agriculture, Farmers Home Administration

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Date _____
Dear: _____

The farm that you used to own may be available for you to buy or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations, 7 C.F.R. Part 1951, Subpart S, Exhibit J. FmHA acquired this property on _____. If you would like to know more about the leaseback/buyback program please contact the FmHA County Supervisor at _____. In order to be considered for leaseback/buyback, you must enter into a lease or a purchase agreement not later than (180 days from acquisition date).

[If the borrower was an individual] If you are not interested in purchasing or leasing the property and if you have a spouse or child(ren) who are actively engaged in farming, they have a preference to buy or lease the property. It will be your responsibility to notify your spouse and children of their possible rights to lease or buy the property. You should have them contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must enter into a lease or a purchase agreement not later than (insert date 190 days from date of acquisition).

[If the borrower was an entity] If you are not actively engaged in purchasing or leasing the property the shareholders (if the borrower was a corporation owned exclusively by members of the same family), partners (if the borrower was a partnership whose partners are exclusively members of the same family), or members (if the borrower was a joint operation or cooperative whose members are exclusively members of the same family) may have a preference to lease or purchase the farm. In order to qualify for leaseback/buyback the individual must be actively engaged in farming. You must have these people contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must enter into a lease or a purchase agreement not later than (insert date 190 days from the date of acquisition).

Under some circumstances, an operator (lessee) of the property at the time FmHA acquired it may have a preference in leasing and purchasing the property. Please advise us of the name and address of any lessee of the farm who was operating the farm when FmHA acquired it.

[If the property has a dwelling] This property has a dwelling which is subject to the FmHA Dwelling Retention regulations 7 CFR Part 1951, Subpart S, Exhibit I. If you are eligible for Dwelling Retention, you will be notified in a separate letter. If someone else has Dwelling Retention rights, then dwelling retention rights will take priority over leaseback/buyback rights. Failure to respond by (insert date 180 days from date of acquisition) will terminate any rights that you have to purchase or lease the property under the leaseback/buyback regulations.

Sincerely,

_____

County Supervisor.

Attachment 3—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor To Advise Operators of the Availability of Leaseback/Buyback)

United States Department of Agriculture, Farmers Home Administration

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Dates _____
Dear _____:

The farm that was previously owned by _____ (former owner) and operated (leased) by you may be available for you to purchase or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations 7 CFR Part 1951, Subpart S, Exhibit J. If you would like to know more about the

leaseback/buyback program, please contact the FmHA County Supervisor at _____. In order to be considered for leaseback/buyback, you must enter into a lease or purchase agreement not later than 30 days from the date of this letter.
Failure to respond by this date will terminate any rights that you have to purchase or lease the property.

Sincerely,

County Supervisor.

PART 1955—PROPERTY MANAGEMENT

44. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

45. Section 1955.1 is revised to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of Farmer Home Administration (FmHA) loans identified in § 1955.3 (e) and (f) of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan other than Business and Industrial (B&I) under the contract of guarantee, the liquidation will be completed according to this subpart. Liquidations of guaranteed B&I loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I actions involving loans secured by other than real or chattel property, the case will be forwarded to the National Office for prior review and guidance. Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

46. Section 1955.3 is amended by redesignating paragraphs (c) through (k) as (d) through (l) and adding a new paragraph (c) to read as follows:

§ 1955.3 Definitions.

* * * * *

(c) *Dwelling Retention.* The Farmer Programs borrower-owner's right to lease with an option to purchase the principal residence located on or off the farm and not more than 10 acres of adjoining land possessed and occupied by the borrower-owner, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead.

* * * * *

47. Section 1955.10 is amended by revising the introductory text, paragraph (c)(1)(ii) and paragraph (d)(8) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA should advise the borrower that there is equity in the property before accepting an offer to voluntarily convey. If FmHA receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. If the FmHA lien has neither present nor prospective value or if its enforcement would be unlikely or uneconomical, FmHA should refuse the voluntary conveyance. Instead, for loans to individuals, FmHA should release its lien as valueless in accordance with § 1965.25(d) of Subpart A of Part 1965 of this chapter or § 1965.118(c) of Subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; it is determined the borrower will not be successful; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA may recover its cost in return for the acceptance of the voluntary conveyance. Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will not be sent to FP borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter and will not be sent to borrowers whose accounts have been accelerated. For Farmer Program borrowers who have received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should only be accepted after the borrower has been advised of the FP servicing options, as outlined above; the servicing options for the FP and the respective non-FP loans have been used or considered, it is determined that the borrower will not be successful in the farming operation; and it is in the Government's best financial interest. For borrowers having both FP and non-FP loans with the non-FP loans secured by a separate non-farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing options for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the non-farm tract.

* * * * *

(c) * * *

(1) * * *

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of Subpart B of Part 1955 of this chapter.

* * * * *

(d) * * *

(8) Farmer program loan borrowers who voluntarily convey after receiving Attachments 1, "Farmers Home Administration Summary of Primary and Preservation Loan Service Programs," 3,

"Notice of Intent to Continue with Acceleration of Your Farmers Home Administration Account and Notice of Your Rights," 7, "Notice of Intent to Accelerate and Notice Your Rights," and 9, "Notice of Intent to Accelerate and Notice of your Rights," of Exhibit A of Subpart S of Part 1951 of this chapter and return Attachments 2, "Acknowledgement of Notice of Loan Service Programs," 3A, "Notice of Intent to Continue with Acceleration of Your Farmers Home Administration Accounts and Notice of Your Rights," 4, "Response to Notice of Intent to Continue with Acceleration and Notice of Borrower Rights," and 8, "Response to Notice of Intent to Accelerate and Notice of Borrowers Rights," of Exhibit A of Subpart S of Part 1951 of this chapter.

* * * * *

48. Section 1955.15 is amended by revising paragraphs (d)(2)(iv), (d)(3), (d)(4) and (d)(5) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(2) * * *

(iv) If a borrower has both Farmer Program and SFH loans:

(A) When the borrower's dwelling financed with an SFH loan(s) is secured by the same farm real estate as the Farmer Program loan(s) (*dwelling located on the farm*), the SFH loan(s) must be accelerated at the same time the borrower is sent Attachments 7 and 8 of Exhibit A of Subpart S of Part 1951 of this chapter. An appeal hearing and one review will be held for both adverse actions.

(B) When the borrower's SFH loan financed *dwelling is located on a non farm tract*, the SFH loan will not be accelerated simultaneously with sending out Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter if the requirements of § 1965.25(d) or § 1965.26(c)(2) of Subpart A of Part 1965 of this chapter are met.

(3) *Offers by borrowers after acceleration of account.*—(i) *Farmer Programs (FP) accelerations.* This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the servicing official will accept payments in full, payments to bring the account current, and accept payments for less than the unpaid loan balance. The borrower will have 30 days from the date of the acceleration notice to either bring the account current or to make payment in full to stop the acceleration.

(A) Payment in full (see Exhibit D, "Notice of Acceleration—Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy," of this subpart (available in any FmHA office)) may consist of the following means of fully satisfying the debt.

(*1*) Cash.

(*2*) Transfer and assumption.

(*3*) Sale of property.

(*4*) Voluntary conveyance.

(B) When the borrower is sent Exhibit D of this subpart (available in any FmHA office), they will be notified that they may bring the account current which will stop the foreclosure action. They will also be advised that this is a one-time opportunity, and if at a later date the account becomes delinquent again, they will not have another opportunity to correct the default except by satisfying the debt in full.

(C) Payments which do not bring the account current can be accepted subject to the following requirements:

(*1*) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(*2*) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed; a State supplement will be issued in this regard. In States where payments cannot be accepted unless the acceleration is reversed, the payments will be placed in a supervised bank account (SBA), unless State law would require the acceleration to be reversed in which case the payments will be refunded to the borrower. Such payments must remain in the SBA until the liquidation is completed at which time they will be applied to the account.

(*3*) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result and FmHA may proceed as though no such payment had been made. Disposition of such payments will be made after consulting OGC.

(*4*) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). The acceleration notice explains how and when borrowers can pay their accounts in full or cure their default. In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer has been received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations.* After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result and FmHA may proceed as though no such payment had been made. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer has been received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was

accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue rental payments in accordance with their leases.

(iii) Whenever payments are accepted after acceleration and the acceleration is not reversed, the maximum amount which the Government may bid at the foreclosure sale as set forth in paragraph (d)(5) of this section will be adjusted accordingly.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be forwarded to the Finance Office by the approval official requesting a statement of account including all loans being foreclosed. For SFH loans subject to recapture of subsidy, a request should be placed in the "Remarks" section of Form FmHA 450–10 that the total interest credit granted and principal reduction attributed to subsidy be shown. When an official statement of account is not required for foreclosure proceedings, account balances and recapture information may be obtained through the field office terminal system.

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed. In Farmer Program cases (except graduation cases under Subpart F of Part 1951 of this chapter), the borrower must have received Attachment 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter, and any appeal must have been concluded.

* * * * *

49. Section 1955.18 is amended by adding the introductory text, revising paragraph (h) and adding paragraphs (i) and (j) to read as follows:

§ 1955.18 Actions required after acquisition of property.

The approval official may employ the services of local designated attorneys, on a case by case basis, to process all legal procedures necessary to clear the title to foreclosure properties in inventory. Such attorneys shall be compensated at not more than their usual and customary charges for such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

* * * * *

(h) *Dwelling retention.* The County Supervisor will notify the borrower-owner of dwelling retention rights by sending Attachment 1 of Exhibit I of Subpart S of Part 1951 of this chapter to the borrower-owner.

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending Attachment 2 of Exhibit J of Subpart S of Part 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires CONACT real property. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights by sending Attachment 3 of Exhibit J of Subpart S of Part 1951 of this chapter, to the immediate previous operator, certified mail, return receipt requested, immediately after FmHA acquires CONACT real property. The real property must have secured a CONACT loan. In the case of a conflict between dwelling retention and leaseback/buyback as the ownership or lease of the borrower's principal dwelling, the provisions of the dwelling retention program will have priority over leaseback/buyback.

(j) *Priority disposal of inventory property.* When real property which was acquired pursuant to the CONACT becomes available for sale, the County Supervisor will dispose of the property in the priority order set forth in Subpart C of this part. All those borrower-owners, immediate previous owners and immediate previous operators as described in this subpart and Subpart C of this part will be sent Attachment 2 or 3, as appropriate, of Exhibit J of Subpart S of Part 1951 of this chapter, certified mail, return receipt requested.

50. Subpart B is amended by revising §§ 1955.51 through 1955.100 and adding Exhibits A and B to read as follows:

Subpart B—Management of Property

Sec.

Exhibits to Subpart B

Subpart B—Management of Property

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by the Farmers Home Administration (FmHA) after abandonment by the borrower;

(b) Management of real and chattel property which is in FmHA's inventory; and

(c) Management of real and chattel property which is security for a guaranteed loan liquidated by FmHA (or which FmHA is in the process of liquidating).

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

Conact or Conact property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agricultural Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

Contracting officer (CO). CO means an FmHA employee designated to enter into or administer contracts and make related determinations and findings. Only the CO and his/her designated representative are authorized to conduct official business with the contractor in the administration of a contract.

Custodial property. Borrower-owned real property and improvements which serve as security for an FmHA loan, have been abandoned by the borrower, and of which FmHA has taken possession.

Farmer Program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), and Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing Loans for farm service buildings (RHF).

Government. The United States of America, acting through the FmHA, U.S. Department of Agriculture.

Indian Reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and, including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Inventory property. Real and chattel property and related rights to which the Government has acquired title.

Loans to individuals. Farmer Program, as defined in paragraph (e) of this section, whether to individuals or entities; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both sections 502 and 504 loans.

Loans to organizations. Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use (Grazing Associations); Business and Industrial (B&I) to both individuals and groups, Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

Nonrecoverable costs. Costs incurred after Government acquisition of title to the property and charged to an inventory account.

Office of the General Counsel (OGC). The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

Recoverable costs. Costs charged to a borrower's account paid or incurred prior to Government acquisition of the property.

Servicing official. For loans to individuals as defined in this section, the servicing official is the County Supervisor; for all other types of loans except insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

Socially disadvantaged individual. An individual that has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Suitable property. Property that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, those general purposes for which FmHA makes real estate loans as set out in § 1943.24 of Subpart A of Part 1943 of this chapter must be considered in classifying property. For farm inventory property, suitability is determined by the County Committee. If a determination is made by the applicable County Committee that FmHA will make a FO loan on the property, it will be classified as suitable. This includes those farm properties that may be used as a start-up or add-on parcel of farmland.

Surplus property. Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

Unsuitable property. Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA requirements for existing housing as described in § 1944.16 of Subpart A of Part 1944 of this chapter. It may be an otherwise-suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) The State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(b) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(c) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State Supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmer Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) *Taking security property into FmHA custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the form listed in paragraph (a) of this section and the provisions of § 1965.26 will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter certified mail, return receipt requested, at the address currently used by the Finance Office outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this chapter.

(ii) If the unpaid loan balance plus recoverable costs exceed the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Cost incurred in connection with procurement of such things as management services and obtaining audits of the borrower's accounts will be handled in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that foreclosure be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody. Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the State Director.

(d) *Costs and income.* Expenditures will be charged to the borrower's account as recoverable costs. Income from the property will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Payment for advances made by FmHA while the property is owned by the borrower will be made by preparation of SF–1034, "Public Voucher for Purchases and Services Other than Personal," for taxes, assessments, utilities, other similar costs, or for securing the property, maintenance, essential repairs, and management services refer to FmHA Instruction 2024–A for guidance (available in any FmHA office). In either case, Form FmHA 2024–

1, "Miscellaneous Payment System," will be prepared and distributed according to the Forms Manual Insert (FMI) for payment according to FmHA Instruction 2024–P (available in any FmHA office).

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2), or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Regional Director may or may not concur that the proposed action does or does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§§ 1955.57 through 1955.59 [Reserved]

§ 1955.60 Inventory real property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of Part 1955 of this chapter.

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

Advice and assistance will be obtained from OGC when eviction from realty or dispossession of chattel property action is necessary. Where State laws permit and *OGC has given authorization,* eviction may be effected through State courts rather than Federal courts. In those cases, a State supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA loan account, if any.

(iii) To the borrower, if whereabouts is known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs. Refer to FmHA Instruction 2024–A (available in any FmHA office) for guidance.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State laws.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitable for program purposes. The suitability determination will be recorded in the running record of the case file. For farm property, the County Committee will classify or reclassify real property that is farmland as being suitable for farming operations for disposition as suitable property unless the property, including property subdivided, cannot be used to meet any general farm real estate purposes including being used as a start-up or add-on parcel of farmland. Refer to § 1955.53 of this subpart for guidance.

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classifed as suitable or surplus. Farm property will be classified by the applicable County Committee. Properties acquired under the CONACT which are originally classified as suitable may be reclassified as surplus because of physical damage which occurs or change in economic conditions which affect its suitability for program purposes, and, if not sold within three years after acquisition, it must be declared surplus. Form FmHA 1955–3A must be processed to update a change in the property suitability classification. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Grouping and subdividing surplus farm properties larger than family-size.* The County Supervisor will subdivide surplus properties whenever possible into parcels for the purpose of creating one or more suitable farm properties based on recommendations from the County Committee. The County Committee will certify on Form FmHA 440–2, "County Committee Certification or Recommendation," that they visited the farm and a narrative of the visit will be placed in the county office case file. In addition, a map of the property showing the new boundaries will also be a part of the case file. The County Supervisor may also group two or more individual surplus properties into one or more suitable farm properties based on recommendations from the County Committee. However, the maximum guaranteed FO loan limit of $300,000 will not be exceeded. The environmental effects will also be considered pursuant to Subpart G of Part 1940 of this chapter. Also refer to § 1955.140 of Subpart C of this part. The State Director, with prior approval of OGC, may issue a State supplement addressing any applicable State laws. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA Office) and charged to the inventory account as a nonrecoverable cost.

(c) *Housing property.* Property which secured housing loans will be classified as "suitable" or "unsuitable". Location, size, design, possible health and safety risks to occupants, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise-suitable dwelling as unsuitable simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made suitable, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as suitable may be reclassified as unsuitable if physical damage occurs which is not economically feasible to repair. Form FmHA 1955–3A must be processed to update a change in the property suitability classification. Where a SFH property is situated on land in excess of a minimum adequate site as defined in § 1944.11 of Supart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum adequate site for another dwelling. It is not intended to classify an otherwise-suitable dwelling as unsuitable solely because it is situated on more than a minimum adequate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum adequate site for another dwelling, the property may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(d) *Authority for determining suitability*—(1) *County Committee.* The County Committee will determine suitability of farm property, with the advice of the County Supervisor if the committee is uncertain of the proper classification.

(2) *County Supervisor.* The County Supervisor will determine suitability of SFH property with the advice of the District Director if the County Supervisor is uncertain of the proper classification for the SFH property.

(3) *District Director.* The District Director will assist the County Supervisor in determining suitability of SFH property as provided in paragraph (c) of this section.

(4) *State Director.* The State Director will determine suitability of all types of property other than farm property. With the recommendations of the District Director, the State Director will make determinations on MFH property.

§ 1955.64 Securing, maintaining, and repairing inventory property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. Substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in Exhibit C, Paragraph 3(b) (1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policy.* After a determination of suitability is made, repairs will be accomplished in accordance with the following provisions. Properties that are listed or eligible for listing on the National Historic Register of Historic Places in whole or in part will be repaired as necessary to protect their historic

integrity after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding any repairs. Also, if any property presents a health or safety hazard, except for SFH and MFH properties being sold with "Decent, Safe and Sanitary" (DSS) clauses, necessary steps will be taken to remove the hazard, and if necessary, after seeking advice from appropriate agencies having related expertise or jurisdiction.

(1) *SFH.* SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s) landscaping, driveways, walks, and other site development in order to have a desirable property. Exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale, or when the property is likely to be vandalized before it can be sold. Unsuitable property which does not meet the "decent, safe, and sanitary" (DSS) standards outlined in § 1955.103 of Subpart C of Part 1955 of this chapter will be repaired to meet those standards when economically feasible; otherwise, the restrictions on occupancy as set forth in § 1955.116 of Subpart C of Part 1955 of this chapter will apply. To be economically feasible, repairs should increase the expected "as is" sale price by at least the cost of the repairs.

(2) *MFH.* MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in an "as is" condition. Property which does not meet the DSS standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter is subject to the occupancy restrictions set forth in § 1955.116 of Subpart C of Part 1955 of this chapter.

(3) *Farm property.* Only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place the farm in marketable condition. Conservation of soil, water and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS), through the development of conservation practices for the farm property. The County Supervisor will request that the SCS identify the location of any highly erodible land and recommend specific conservation practices to control erosion. The County Supervisor will carry out those conservation practices that are essential to preserve and protect the property and to place it in marketable condition. Any differences between FmHA and SCS regarding the need for a certain practice will be resolved in the manner indicated in § 1955.137(c)(2) of Subpart C of this part. Recommendations will also be requested from the U.S. Fish and Wildlife Service regarding fish and wildlife conservation measures. See Exhibit A of FmHA Instruction 2000–LL (available in any FmHA office) for further information.

(4) *Property other than housing and farms.* Each property will be evaluated individually to determine whether repairs should be made or the property offered for sale "as is." The State Director will obtain advice from the appropriate division in the National Office as necessary in making these determinations.

(b) *Program authority.* (1) The County Supervisor and District Director have program authority to approve expenditures for securing, maintaining, and repairing inventory properties in an aggregate amount not to exceed $15,000 per property. If expenditures in excess of $15,000 per property are necessary and are economically feasible, the servicing official may request additional program authority from the State Director, outlining the purpose(s) for which the additional monies will be spent.

(2) The State Director or any member of the State Office staff duly designated by the State Director, has unlimited program authority to approve expenditures in connection with inventory property.

(c) *Contracting authority.* All contracts for securing, maintaining, and repairing inventory property will be handled in compliance with FmHA Instruction 2024–A (available in any FmHA office), subject to the limitations assigned to each position in FmHA Instruction 2024–A (available in any FmHA office). Costs incurred under this section will be charged to the inventory account as nonrecoverable costs.

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority*—(1) *County Supervisor.* The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure an individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing inspection of repairs and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties, and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to

that effect in accordance with § 1955.66(e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2 "Affirmative Fair Housing Marketing Plan," subject to FmHA's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in Exhibit J, paragraph II C, "Procurement Preference Program," of FmHA Instruction 2024–A (available in any FmHA office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024–A (available in any FmHA office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA Instruction 2024–A (available in any FmHA office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA Instruction 2024–A (available in any FmHA office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparor or his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA Instruction 2024–A (available in any FmHA office).

(4) *Costs.* Costs incurred in management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form FmHA 120–10 or SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property, costs will be charged to the inventory account as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation servicas, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

§ 1955.66 Lease of real property.

When inventory real property, other than MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or FmHA on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart.

(a) *Authority to approve lease of property*—(1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of FmHA.

(2) *Inventory property*—(i) *SFH.* The County Supervisor may approve the lease of single-family dwellings.

(ii) *MFH.* MFH projects will generally not be leased, although indiv dual living

units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed, and occupied as a principal residence by a prior owner who was personally liable for a Farmer Program loan must first be considered for dwelling retention under Exhibit I of Subpart S of Part 1951 of this chapter and Exhibit J of Subpart S of Part 1951 of this chapter for leaseback/buyback.

(B) The County Supervisor may approve the lease of farm property when a feasible plan of operation can be developed in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(C) When a lease with an option to purchase is signed, the lessee should be told that FmHA cannot make a committment to finance the purchase of the property in the future. Except for leases with an option to purchase, special stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops and rental payment will be prorated between the Government and the purchaser of the property.

(D) The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property.

(E) Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to impact on the environment, preservation of land for agricultural purposes as required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property.

(F) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(G) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. All prospective lessees will be notified in writing of the presence of highly erodible land, converted wetlands and wetlands on inventory property. This notification will enclose a copy of Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetland or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M of Subpart G of Part 1940 of this chapter. If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity. Additionally, a copy of Form SCS–CPA–26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955–20, "Lease of Real Property," prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as an eligible applicant for purchase of the property (if property is suitable for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for farm property*—(1) *Farm Plans.* All prospective lessees will be required to submit a farm plan for the upcoming crop year and to submit evidence of their income. The County Supervisor must determine that the prospective lessee has the financial resources and farm management skills and experience that are sufficient to assure a reasonable prospect that the terms of the lease can be fulfilled. The County Supervisor may require verification of income and/or a credit report (to be paid for by the prospective lessee).

(2) *Racial and ethnic consideration.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the approval official will make a special effort to insure that those prospective lessees are reached in the marketing area who traditionally would not be expected to lease FmHA farm inventory properties or apply for farm ownership loan assistance because of existing racial or ethnic prejudice. Emphasis will be placed on providing technical assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1910 of this chapter.

(3) *Rights of previous owner and notification.* For leaseback/buyback rights of former borrower/owners, refer to Exhibit J of Subpart S of Part 1951 of this chapter. Grazing association loans are considered loans to an organization as defined in § 1955.53 of this subpart, and therefore are not subject to the leaseback/buyback and dwelling retention provisions of Exhibits I and J of Subpart S of Part 1951 of this chapter.

(d) *Property securing Farmer Program loans located within an Indian Reservation.* (1) If real property securing a Farmer Program loan is located within an Indian Reservation and the owner or former owner is a member of such Indian tribe, then the tribe or such member-owner will be offered leaseback/buyback rights pursuant to Paragraph II, III A, and IV through VII of Exhibit J to Subpart S of Part 1951 of this chapter. If the former owner is a member of the tribe and does not want to exercise leaseback/buyback rights, the spouse and children of the former member-owner will be offered leaseback/buyback rights pursuant to Paragraph III B of Exhibit J to Subpart S of Part 1951 of this chapter.

(2) If neither the tribe nor the former member-owner nor such member-owner's spouse or children exercise leaseback/buyback rights within the applicable time limits, then the County Supervisor shall, within 90 days after the expiration of the leaseback/buyback rights of the tribe, tribe member-owner, and the spouse and children of the tribe member-owner in paragraph (d)(1) of this section, advise the tribe by letter, similar to Exhibit B of this subpart, of additional leaseback/buyback priority rights as follows (unless the tribe shall have established a different priority order for these additional leaseback/buyback rights):

(i) To an Indian member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

(iii) To the Indian tribe.

(3) If the real property covered in paragraph (d)(1) of this section is not purchased or leased pursuant to paragraphs (d)(1) or (d)(2) of this section and the Indian tribe having jurisdiction over the reservation is unable to purchase or lease the real property, the State Director shall transfer the property to the Secretary of the Interior. This determination will be made after an evaluation of the tribe's financial information. Adverse decisions will be appealable pursuant to Subpart B of Part 1900 of this chapter. Properties within a reservation formerly owned by non-tribal members will be treated as regular suitable or unsuitable inventory property that is not located on an Indian Reservation and disposed of pursuant to this subpart and Subpart C of this part.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Special Stipulations into the lease in accordance with the FMI for Form FmHA 1955–20, "Lease of Real Property." The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly accounted for and collecting the lease money.

(2) *SFH property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus 1/12 of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property in flood or mudslide hazard area.* Inventory property located in an area identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(g) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the leases, conservation practices specified by the SCS and approved by the FmHA for Preservation Loan Programs, refer to Exhibit A of Subpart S of Part 1951 of this chapter.

(h) *Lease of farm property with option to purchase.* Except for property that was pledged to secure a loan to an organization, a lessee may be given the option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value, as of the date the option is exercised, of the farm as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422–1, "Appraisal Report-Farm Tract." A lease with option to purchase farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price. Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with Subpart F of Part 1942 of this chapter. For Preservation Loan Programs, refer to Exhibit A of Subpart S of Part 1951 of this chapter. Denials of applications for or disputes over terms and conditions of a lease are appealable, pursuant to Subpart B of Part 1900 of this chapter.

(i) *Advertising farm property for lease.* Advertisement is not required when an existing lease will be renewed or renegotiated with the present lessee or when the property is being offered pursuant to leaseback/buyback. Otherwise, to assure fair and equitable treatment to all interested parties, public notice will be given of the availability of each inventory property for lease. Public notice means, as a minimum, advertisement in a newspaper or periodical that has a major circulation in the area where the inventory property is located. The public notice shall include as a minimum:

(1) All of the applicable qualifications, terms, conditions, restrictions, and stipulations associated with the lease, and how and when a lessee will be selected;

(2) A description of the property including its location and the presence of any natural hazards such as floodplains, wetlands and special mudslide hazard areas;

(3) The closing date and time for receiving written offers to lease;

(4) The terms of the lease;

(5) A statement that the Government reserves the right to reject all offers to lease;

(6) A statement that the property will be leased without regard to race, color, religion, sex, age, national origin or marital status.

(j) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 2024–A (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this subpart will be charged to the borrower's account as recoverable costs; and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(k) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit with advice from the State Office staff if requested. Security deposits will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and held by the Finance Office until the leasing official determines to return or otherwise to dispose of the security deposit. The Finance Office Property Accounting Unit

will be requested by memorandum to return the deposit to the servicing office for delivery to the lessee; or, if the deposit is to be retained by FmHA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate. For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," prepared according to the FMI must be forwarded to the Finance Office for every tenant from whom a deposit is required. A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. ____, formerly owned by _____.

(2) If security deposits are no longer to be required and there are outstanding deposits which should be refunded, requests will be handled as they would have been prior to acquisition of the property.

(l) *Lease form.* Form FmHA 1955–20, prepared according to the FMI, or other form approved by OGC, will be used by FmHA to lease property. The lease will be prepared, executed, and distributed according to the FMI depending on whether it is custodial or inventory property. On receipt of a lease of inventory property, the Finance Office will establish a lease account in the lessee's name.

(m) *Lease income.* Lease proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(1) *Custodial property.* The proceeds from lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC will be consulted as to the procedure to be followed in each State and instructions will be given in a State Supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

(n) *Termination of lease of inventory property.* When a lease is terminated, or when the property is sold before expiration of the term shown on the lease submitted to the Finance Office, the servicing official will notify the Finance Office, of the termination and the effective date of termination according to the FMI for Form FmHA 1955–20.

(o) Except for property covered by paragraph (d) of this section, once all rights under leaseback/buyback (see Exhibit J of Subpart S of Part 1951 of this chapter) have expired, the property may be leased in accordance with the provisions of this subpart or sold in accordance with the provisions of Subpart C of this part.

§ 1955.67 Payment of liens.

(a) If real estate was acquired subject to a lien, the servicing official may authorize payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024–P (available in any FmHA office) by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost. If it is later determined that continuing to make payments on prior liens is no longer in the best interests of the Government for reasons such as, but not limited to, declining property values or uninsured property losses, the State Director may:

(1) Convey the property to the prior lienholder if the lienholder will agree to accept the conveyance in full satisfaction of the prior lien; or

(2) Discontinue payments to the lienholder, and allow the lien to be foreclosed.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and process SF–1034 and Form FmHA 2024–1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

§ 1955.68 Payment of taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A State Supplement may be issued with the advice of OGC to cover individual State laws. The servicing official shall notify the appropriate taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advise that claims for taxes, if applicable, during the Government's ownership should be billed to FmHA at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable property.* When property is classified as suitable for program purposes, the servicing official will prepare SF–1034 and submit Form 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified as surplus, taxes will be paid as outlined in paragraph (a) of this section.

(c) *Unsuitable housing property.* When property is classified as unsuitable for program purposes and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 Insurance.

Insurance in force at the time property is acquired will not be cancelled; however, no additional premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area and operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparation of SF–1034 and submission of Form FmHA 2024–1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of acquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as provided in paragraph (a) of this section. If, however, the prior lienholder's mortgage requires the borrower to carry insurance, FmHA may provide the required insurance, if necessary, to

prevent foreclosure by the prior lienholder.

§ 1955.70 Inspection of property.

The servicing official shall inspect property as necessary to protect the Government's interest. Farm property will be inspected at least annually to determine if adequate measures are in effect to conserve the soil, maintain its fertility, and control erosion. Inspection will be made in connection with travel for other purposes, whenever possible, and documented in the inventory file.

§ 1955.71 Vandalism or theft.

(a) *Reporting.* Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director with a copy to the Regional Office of the USDA Office of Inspector General (OIG).

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC in coordination with OIG. The State Director after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this subpart. Repairs of damage to custodial property will be limited as outlined in § 1955.55(c) of this subpart and obtained as outlined in § 1955.55(d) of this subpart.

§ 1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

§§ 1955.73 through 1955.79 [Reserved]

§ 1955.80 Management of inventory chattel property.

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 60 days must be approved in writing by the State Director. Normally, chattel property will not be leased, except as provided in paragraph (c) of this section.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955–D (available in any FmHA office).

(b) *Contracting for service.* Services such as transportation, care, storage, and harvest of crops will be obtained by use of Form FmHA 120–10 in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(c) *Lease of chattel property.* Chattels which are essential to the operation of a farm, such as bulk milk tanks, pumps, and center-point sprinkler may be leased with the real property when a farm is to be leased. The lessee will be responsible for maintenance and repairs during the lease term. Costs of repairs will be limited to those essential to place the equipment in operational condition to effect lease of the farm. When a lessee cannot or will not make needed repairs, the servicing official will contact the State Director for guidance on economic feasibility.

(d) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955–10, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part and recorded on the original list of acquired chattel property in the inventory file.

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.82 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83 through 1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0110.

Exhibits to Subpart B

Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration

Note.—This memorandum is available from any FmHA office.

Exhibit B—Notification of Tribe of Availability of Farm Property for Lease or Purchase

(To Be Used By FmHA to Notify Tribe of Leaseback/Buyback)

From: County Supervisor
To: [Name of Tribe and address]
Subject: Availability of Farm Property for Lease or Purchase [To be Used After 190-Day Period Has Expired]

Recently Farmers Home Administration (FmHA) acquired title to _____ acres of farm real property located within the boundaries of your Reservation. This property is available for purchase or lease with or without an option to purchase. Our regulations provide for three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of the following:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase and/or lease of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FmHA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities, you may restrict eligible Indian corporate entities to those authorized by your Tribe to lease and/or purchase lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to lease and/or purchase the property. If available, Indian Land Acquisition funds may be used or the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FmHA County Office of your selection or intentions within 45 days of receipt of this letter, regarding the lease and/or purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned above, please contact our office. If the Tribe wishes to lease or purchase the property, but is unable to do so at this time, contact with the FmHA County Office should be made.

Sincerely,

County Supervisor.

51. Subpart C (§§ 1955.100 through 1955.150) is revised to read as follows:

Subpart C—Disposal of Inventory Property

Sec.

Subpart C—Disposal of Inventory Property

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property.

§ 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When the property is of a nature that it is suitable to enable an eligible applicant for one of Farmers Home Administration's (FmHA) loan programs to meet the objectives of that program, preference will be given to eligible applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type of loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: A dwelling which secured an Emergency loan may be sold as a Single Family Housing (SFH) unit if suitable for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

§ 1955.103 Definitions.

As used in this subpart, the following definitions apply:

Approval official. The FmHA official having loan and grant approval authority authorized under Subpart A of Part 1901 of this chapter.

Auction sale. A public sale in which property is sold to the highest bidder in open verbal competition.

Closing agent. An attorney or title insurance company designated to close loans according to Part 1807 of this chapter (FmHA Instruction 427.1, available in any FmHA office).

CONACT or CONACT PROPERTY. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agricultural Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

Credit sale. A sale in which financing is provided to an applicant for the purchase of inventory property.

Decent, safe and sanitary housing (DSS). Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements,

(1) Are structurally sound and habitable,

(2) Have a portable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems, and

(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this chapter.

Dwelling Retention. The program which permits former Farmer Program borrowers to lease their former principal residence with an option to buy. See Exhibit I of Subpart S of Part 1951 of this chapter.

Eligible terms. Terms prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting the eligibility requirements set forth for the respective programs.

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF).

Ineligible terms. Credit terms offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is determined unsuitable (housing) or surplus (other than housing) for program purposes. Loans made on ineligible terms are classified as "Non Program Loans (NP)" and are serviced accordingly.

Inventory property. Property for which title is vested in the Government and which secured an FmHA loan or which was acquired from another Agency for program purposes.

Leaseback/buyback. The program which permits certain former owners and certain former operators to repurchase or lease their former farm. See Exhibit J of Subpart S of Part 1951 of this chapter.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Negotiated sale. A sale in which there is a bargaining of price and/or terms.

Organization property. Property for which the following loans were made is considered organization property: Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-in-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

Owner. An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory.

Participating broker. A duly licensed real estate broker who has executed a listing agreement with FmHA.

Previous operator. An individual or member(s) of an entity managing or conducting the day to day business at the time the farm was taken into inventory.

Regular FmHA sale. Sale made by other than sealed bid, auction or negotiation by FmHA employees or real estate brokers.

Safe. No hazard exists on property which would likely endanger the health or safety of occupants or users.

Sealed bid sale. A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

Socially disadvantaged individual. An individual who has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Suitable property. Property that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, those general purposes for which FmHA makes real estate loans as set out in § 1943.24 of Subpart A of Part 1943 of this chapter must be considered in classifying property. For farm inventory property, suitability is determined by the County Committee. If a determination is made by the applicable County Committee that FmHA may make a FO loan on the property, it will be classified as suitable. This includes those farm properties that may be used as a start-up or add-on parcel of farmland.

Surplus property. Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

Unsuitable property. Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this chapter. It may be an otherwise suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program requirements and available resources.

(1) The State Director may redelegate, in writing, any authority delegated to him/her in this subpart, unless it is specifically excluded. These redelegations are authorized to a Program Chief, Program Specialist or Property Management Specialist on the State Office Staff, and to District Directors and County Supervisors.

(2) The District Director may redelegate in writing any authority delegated to him/her in this subpart to an Assistant District Director or District Loan Specialist.

(3) The County Supervisor may redelegate in writing any authority delegated to him/her in this subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified.

(b) *Responsibility.* (1) National Office Program Directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and for insuring compliance with FmHA regulations. For organization property, the State Office is responsible for approval of inventory property sales.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The approval official has the authority to accept or reject bids or offers for inventory property, with the final sale

price to coincide with loan approval limitations.

Consolidated Farm and Rural Development Act (CONACT) Real Property

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* Sections 1955.106 through 1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); CF; WWD; RC&D; WS; Association Recreation; EOC; Rural Renewal; Water Facility; B&I; irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Leaseback/buyback and Dwelling Retention, as set forth in Exhibits I and J of Subpart S of Part 1951 of this chapter, are only applicable to Farmer Program loans as defined in § 1955.103 of this subpart.

(b) *Controlled substance conviction.* In accordance with the food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its member, if an entity, have not been convicted of such crime after December 23, 1985.

(c) *Effects of farm property sales on farm values.* State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

(1) The number of farms and acres that FmHA expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory.

(3) The number of farms and acres that FmHA currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (a)(3) and (a)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the lease, conservation practices specified by the SCS and approved by the FmHA as a condition for sale. Refer to § 1955.137(d) of this subpart for implementation requirements.

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification.* Before any farm property which secured a Farmer Program loan is sold, the County Supervisor shall initially attempt to dispose of the property in accordance with the Leaseback/Buyback program (see Exhibit J of Subpart S of Part 1951 of this chapter) and the Dwelling Retention program (see Exhibit I of Subpart S of Part 1951 of this chapter). If the farm property which secured a Farmer Programs loan is located within an Indian Reservation and the former owner is the tribe that has jurisdiction over the reservation or a member of such tribe, their leaseback/buyback rights will be given pursuant to § 1955.66 of Subpart B of this part.

(b) *Racial and ethnic considerations.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the approval official will make a special effort to insure that those prospective purchasers are reached in the marketing area who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial or ethnic prejudice or cultural bias. Emphasis will be placed on providing technical assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1943 of this chapter.

(c) *Non Program (NP) borrowers.* Non Program (NP) borrowers are not eligible for leaseback/buyback or Dwelling Retention provisions as set forth in Exhibits I and J of Subpart S of Part 1951 of this chapter.

§ 1955.107 Sale of suitable property (CONACT).

Except as provided in § 1955.109 of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to eligible applicants in accordance with FmHA regulations that apply to the appropriate loan program. Real property will be managed in accordance with the provisions of Subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.107 of this subpart.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955–40 or Form FmHA 1955–41, "Notice of Sale," will be posted in a prominent place in the County Office. If an eligible applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or

other recognized Indian governing bodies having jurisdiction over Indian Reservations as defined in § 1955.55 of Subpart A of this part shall be responsible for notifying those parties listed in § 1955.66(d)(2) of Subpart B of this part.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be in accordance with § 1955.130 of this subpart.

(c) *Price.* Property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale. The price will be the market value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(d) *Credit sale procedure.* A credit sale to eligible applicants will be processed as follows:

(1) Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States," will be used to document the offer and acceptance for regular FmHA sales.

(2) The County Committee will certify to the applicant's eligibility on Form FmHA 440–2 in accordance with program eligibility requirements when required by the FmHA regulation that applies to the appropriate loan program.

(3) Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(4) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(5) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(i) Form FmHA 1955–49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of General Counsel (OGC) will be used.

(ii) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(6) When the transaction is closed, the responsible FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," according to the FMI.

(7) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

(e) *Selection of purchaser*—(1) *Nonfarm property.* Except for farm property, when more than one acceptable offer is received during business hours on the same day, the order in which they will be considered by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Backup" offers will be retained in case the first offer processed cannot be closed.

(2) *Farm property.* Suitable farmland may only be sold to operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family-sized farms, as determined by the County Committee. In selling such land, priority must be given to persons eligible for FP loans, including individuals approved for, but who, as of January 6, 1988, have not received such loans. If two or more eligible operators of not larger than family-sized farms, as of the time immediately after the contract of sale or lease is entered into, wish to purchase a suitable farm, the County Committee will make the selection. The reasons explaining the County Committee's selection of the applicant will be fully documented on Form FmHA 440–2. The County Committee will give a priority and make a selection based on the following:

(i) Those eligible individuals that have pending applications filed but have not received the loan assistance.

(ii) Those eligible individuals that have the greatest need for farm income.

(iii) Those eligible individuals that in the opinion of the County Committee, best meet the criteria for eligibility, including the best chance for success based upon an evaluation of the operators' past farm records and proposed farm plan. Some of the factors the County Committee will consider include but are not limited to:

(A) *Liquidity.* Consider working capital, cash flow, the ratios of current assets to current liabilities and current liabilities to total liabilities.

(B) *Solvency.* Consider net worth and the ratio of total liabilities to net worth.

(C) *Profitability.* Consider the net farm income and the ratio of net farm income to net worth.

(D) *Efficiency.* Consider the ratios of cash operating expenses to gross receipts and debt repayment to gross receipts.

§ 1955.108 Sale of surplus property (CONACT).

Except where a lessee is exercising the option to purchase under Exhibits I and J of Subpart S of Part 1951 of this chapter concerning Dwelling Retention or leaseback/buyback, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Property which has been classified as suitable will be held in inventory for 3 years. After 3 years, the property will be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the County Committee and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land, converted wetlands and wetlands on inventory property.

(a) *Rates and terms.* Rates and terms for a Dwelling Retention and leaseback/buyback will be in accordance with Exhibits I and J of Subpart S of Part 1951 of this chapter. Surplus property will be offered for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for Dwelling Retention will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The interest rate for all other surplus property will be the current Farmer Programs ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the time the loan

was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offering has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a down payment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

(b) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. Suitable real property may be sold by sealed bid or auction after it has been in inventory for 3 years. The State Director will determine the method of sale, the minimum acceptable sales price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

*(Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

Equally acceptable sealed bid offers will be decided by lot, except for the sale of farm property, when an acceptable sealed bid from an operator of not larger than family-size farms wish to purchase a farm property, the County Committee will select the operator. The reasons explaining the County Committee's selection of the best qualified applicant will be fully documented on Form FmHA 440–2. The County Committee will give a priority and make a selection based on the following:

(1) Those eligible individuals that have pending applications filed but have not received the loan assistance.

(2) Those eligible individuals that have the greatest need for farm income.

(3) Those eligible individuals that, in the opinion of the County Committee, best meet the criteria for eligibility, including the best chance for success based upon an evaluation of the operators' past farm records and proposed farm plan. Some of the factors the County Committee will consider include, but are not limited to:

(i) *Liquidity.* Consider working capital, cash flow, the ratios of current assets to current liabilities and current liabilities to total liabilities.

(ii) *Solvency.* Consider net worth and the ratio of total liabilities to net worth.

(iii) *Profitability.* Consider the net farm income and the ratio of net farm income to net worth.

(iv) *Efficiency.* Consider the ratios of cash operating expenses to gross receipts and debt repayment to gross receipts.

(c) *Negotiated sale.* If no acceptable bid is received either from a sealed bid sale or at a public auction, the State Director may sell surplus property or suitable property which has been in inventory for 3 years at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. The rates and terms offered through negotiation will be within the limitations of paragraph (a) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955–46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less than ten percent (10%) of the negotiated price in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to FmHA plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval official may accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other party except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising will be ordered by means of Standard Form 1143, "Advertising Order," in accordance with FmHA Instruction 2024–F (available in any FmHA office). Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," will be used to obtain other purchases and services. In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be submitted for payment in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(d) *Sale through real estate brokers.* The State Director may authorize the use of real estate brokers to sell surplus CONACT real property at the market value in accordance with § 1955.130 of this subpart only after the conditions outlined in this paragraph have been met. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees;

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and

(3) Any negotiations have been terminated.

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application (including financial information required for the respective loan program.

(b) *Credit sale approval authority for Farm Programs.* County Supervisors, District Directors and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter,

available in any FmHA office. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales or ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(c) *Form of payment.* Payments at closing will be made in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA.

(d) *Farm real property.* Upon acceptance by the approval official, the County Supervisor or District Director will provide the closing agent with the necessary information to close the sale.

(e) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Forms FmHA 1955–45 or FmHA 1955–46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(f) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's down payment.

(g) *Closing and reporting sales.* Title clearance, loan closing, and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955–49, in accordance with § 1955.141(a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955–50 in accordance with the Forms Manual Insert (FMI).

(h) *Classification.* Credit sales on ineligible terms will be classified as NP loans and serviced accordingly.

(i) *State Supplements.* A State Supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the advice and approval of OGC.

Rural Housing (RH) Real Property

§ 1955.110 Sale of real estate that secured RH loans (housing).

Sections 1955.111 through 1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

§ 1955.111 Property repair (housing).

(a) *Suitable property.* Suitable property will be secured, maintained, and repaired in accordance with § 1955.64 of Subpart B of Part 1955 of this chapter.

(b) *Unsuitable property.* Sufficient maintenance to retain or enhance the visual appeal of the property will be performed provided it is economically justified. When economically feasible, repairs will be made prior to offering the property for sale unless a prospective purchaser has indicated an interest in buying the property "as is" or the County Supervisor or District Director documents that the property would likely be vandalized prior to sale. If the property is not repaired to meet DSS standards, the advertising requirements and deed restriction provisions outlined in § 1955.116 of this subpart apply; and it will immediately be offered for sale "as is." If the property is not sold within 120 days, or if the State Director determines a regular sale is not feasible, the structure may be offered for sale by sealed bid or auction or as chattel, to be removed from the site, in accordance with § 1955.122 of this subpart. If no offer is received the structure(s) may be removed by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office) and the site offered for sale.

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with §§ 1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method of sale is used. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator for Housing.

(b) *Real Estate brokers.* The services of real estate brokers for regular sales will be used as provided for in § 1955.130 of this subpart in any County Office with 5 or more SFH properties in inventory at any one time during the calendar year. The use of real estate brokers by County Offices having less than 5 SFH properties in inventory at any one time during the calendar year is optional by the State Director if staffing and workload permit sales directly by FmHA. When broker services for SFH are used, the FmHA office will not conduct direct sales for the listed property but will refer inquiries to the broker or list of participating brokers unless an acceptable written offer has been received on a property prior to the time it has been determined available for sale and listed with brokers. Brokers may only be used for MFH with authorization of the Assistant Administrator for Housing.

(c) *Sealed bid or auction.* If the State Director determines that *unsuitable* SFH properties have been given adequate market exposure and that diligent sales efforts, including use of real estate brokers, have not produced buyers, he/she may authorize sale by sealed bid or public auction. *Suitable* SFH property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorized the use of the sealed bid or auction method. These authorities may not be redelegated. Indiscriminate use of these methods of sale could adversely affect other properties located in a subdivision. Therefore, the decision to use sealed bid or auction sale methods to dispose of SFH units located in a subdivision must address the number of dwellings to be sold by these methods, the suitability of the entire subdivision for further FmHA financing, and the effect of such sales on the surrounding borrowers. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

§ 1955.113 Price (housing).

Real property will be offered or listed for its market value, as adjusted by any administrative price reductions provided for in this section, except during the period of June 1, 1986, through August 29, 1986, unsuitable SFH inventory property will be offered or listed for 70 percent of market value with the State Director having the authority to deviate from this percentage based upon documentable conditions within the State. Market value will be based on the condition of the property at the time it is made available for sale. However, when a Section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or the market value, less administrative price reductions, if any.

(a) *SFH price reduction.* If SFH property has not sold after being actively marketed for at least 120 days, the County Supervisor or District

Director may administratively reduce the price by an amount not to exceed five percent (5%) if deemed not to be in the best interest of the Government or reappraise the property if additional market data indicates this action is warranted. Subsequent price reduction not to exceed 5 percent per reduction may be made in periods of not less than 120 days each. Administrative price reductions may be made without changing the SFH appraised value. Reduction(s) will be documented in the running record. Active written offers, otherwise acceptable except for price, will be retained and accepted in order of highest price if equal to or greater than the reduced price.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions of price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

§ 1955.114 Sales steps for suitable property (housing).

After repairs, if any, are completed, suitable property will be offered for sale as outlined in this section and Form FmHA 1955–3A processed to incorporate the date the property is listed for sale. The appraisal should be updated and Form FmHA 1955–3A must be processed updating the appraisal date and market value to reflect repairs and improvements, if any, and Form FmHA 1955–40, for SFH property, or other appropriate notice for MFH property, will be prepared. Suitable property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorizes another method. If the State Director determines that suitable properties have been given adequate market exposure and that diligent sales efforts including the use of real estate brokers have not produced purchasers, he/she may request the Assistant Administrator for Housing to authorize sale by sealed bid or public auction.

(a) *Single family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property for regular sale or list it with real estate brokers for sale under the provisions of § 1955.112 of this subpart. Properties will be offered or listed by use of Form FmHA 1955–40, unless FmHA has on hand a signed offer to purchase a specific property. The date the form is posted or listed with participating brokers is the effective date that the offer for sale has begun, and the date it is mailed to participating brokers is the effective date of listing. Offers and listings will provide for sales on both eligible or ineligible terms. However, all suitable SFH property will be available for purchase by eligible SFH applicants *only* for the first 30 days from the date of the initial offering or listing, and for the first 30 days from the date of any reduction in price. During this 30-day period, offers will be accepted from others and held until the beginning of the business day following the 30-day period when they will be considered along with all other offers received that business day. If not sold during the 30-day period, the property may then be purchased by either eligible or ineligible buyers on a first-come first-served basis. However, for written offers received during business hours on the same day, eligibles will be given first priority, then cash offers will take precedence over offers requiring credit. Among cash offers or offers requiring credit on ineligible terms, an offer higher than the listed price will be given preference. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit on ineligible terms.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

(For offers requiring credit on eligible terms, no preferences will be given for an offer higher than the listed price. An offer from an eligible applicant which is higher than the listed price will be treated as equally acceptable with other offers from eligibles and sold for the listed price.) Selection of equally acceptable offers in any category (eligible or ineligible) received the same business day will be made by lot. Credit sales to eligible applicants will be in accordance with the provisions of Subpart A of Part 1944 of this chapter. Sales to ineligibles will be for cash or as credit sales on ineligible terms as outlined in § 1955.118 of this subpart. Offers for less than the listed price may be held until the price has been reduced administratively to the offer price or the property is reappraised, whichever occurs first. The lesser offers will be considered as received on the date of the price reduction.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include the sale price and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director. The sale date will be set to allow adequate time for advertising and review of applications. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type of loan being offered will be considered. Offers will be placed in a receptacle and one offer drawn. Award will be made to the offeror drawn. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, the selection of the successful offeror was by lot and therefore is not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator for Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible applicant meeting the respective program requirements. Any other method of sale must receive prior written authorization of the Assistant Administrator for Housing.

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner or units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD–622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A–6 of Subpart E of Part 1944 of this chapter,

along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator for Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suitable for the SFH program, it may be offered for sale as a SFH unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to an eligible RH borrower on *eligible terms only*—not for cash or on ineligible terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

§ 1955.115 Sales steps for unsuitable property (housing).

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40 for SFH property, or other appropriate notice for MFH property, will be prepared. Process Form FmHA 1955–3A to incorporate the date the property is listed for sale and/or update the new appraisal date and market value.

(a) *Single Family housing.* Sales steps will be the same as for suitable SFH property, as provided in § 1955.114(a) of this subpart, except that sales must be for cash or credit on ineligible terms as provided in § 1955.118 of this subpart. If an unsuitable SFH property has not sold after 120 days from being offered for sale or listed with brokers, consideration should be given to using a sealed bid or auction sale method. Use of the sealed bid or auction method without attempting a regular sale may be considered in special circumstances; e.g., where structures have been substantially destroyed by fire with the remaining value being only in the land. Special circumstances may also indicate that the structures should be sold as chattel (salvage) when authorized by the State Director. Sealed bid sales of unsuitable SFH property should be completed and closed within 90 days of the State Director's authorization to use this method. Auction sales should be completed and closed within 120 days of the State Director's authorization to use this method. The advertising requirements and deed restrictions of § 1955.116 of this subpart apply to unsuitable properties which do not meet FmHA DSS standards.

(b) *Multiple-family housing.* Sales steps will be the same as for suitable MFH property as provided in § 1955.114(b) of this subpart except that sale must be for cash or credit on ineligible terms as set forth in § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell unsuitable MFH property, authority to use that method of sale must be requested from the Assistant Administrator for Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendation of the State Director, must be submitted for review.

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

(a) *Notices and advertising.* If the inventory housing property has a single-family dwelling or a MFH unit which does not meet DSS standards as defined in § 1955.103 (f) of this subpart, any "Notice of Real Property for Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

The structure presently on this property does not meet the "Decent Safe, and Sanitary Housing" standards as defined by the Farmers Home Administration. Prior to being used for residential purposes, the structure must be restored or repaired to:

(1) Be structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and

(4) Meet the Thermal Performance Standards for existing construction as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations.

(b) *Sales agreements.* If a housing structure in inventory does not meet DSS standards, the Forms FmHA 1955–45 or Form FmHA 1955–46 used in conjunction with the sale must indicate the type of deficiencies that exists and must contain the following clause:

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed to the purchaser will contain a covenant binding the purchasers and the property which will restrict the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards as outlined in Exhibit D, of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e).

(c) *Quitclaim deed.* The following or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the quitclaim deed for properties with dwellings which do not meet the definition of decent, safe, and sanitary:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the unit(s) is structurally sound and habitable, as a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems and meets the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as an equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect.

(d) *Release of restrictive clause.* A State Supplement outlining the procedure for releasing the DSS covenant will be issued with the advice and approval of OGC.

§ 1955.117 Processing credit sales on eligible terms (housing).

The following provisions apply to all credit sales on eligible terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales. Contract acceptance is normally made prior to processing Form FmHA 410–4, "Application for Rural Housing Assistance (Non Farm Tract), for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being extended will be followed in making credit sales on eligible terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 5 percent of the purchase price as a cash down payment unless otherwise waived by the Administrator under § 1955.149 of this subpart. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restrictions specified by the respective program requirements.

(c) *Approval.* Form FmHA 1940–1 will be used to approve a credit sale even though no obligation of funds is involved.

(d) *Down payment.* When a down payment is made, it will be collected at closing, identified by advice number, purchaser's name and case number, and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on ineligible terms:

(a) *General.* The provisions of § 1955.117 (a) and (c) of this subpart also apply to sales on ineligible terms. However, the following modification on instruments, if applicable, will be made and initiated by both the applicant and the approval official:

(1) On the promissory note any covenants relating to graduation to other credit, personal occupancy, and restrictions on leasing will be deleted by lining through and will be initiated by the obligor(s).

(2) On the security instrument (mortgage or deed of trust) the covenants relating to graduation to other credit, personal occupancy, and restrictions on lease will be deleted by lining through and will be initialed by the mortgagor(s).

(b) *Down payment.* Down payment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA State Office).

(c) *Interest rate.* The ineligible SFH interest rate will be charged on all credit sales of SFH property on ineligible terms. The Section 515 RRH interest rate plus ½ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on ineligible terms will be closed at the interest rate which is in effect at the time the loan was approved.

(d) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *SFH.* (i) When a purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (d)(1)(i) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(2) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(f) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(g) *Classification.* Credit sales on ineligible terms will be classified as NP loans and serviced accordingly.

§ 1955.119 Payment of discount points (housing).

To effect regular sale of inventory SFH property to a purchaser who is

financing the purchase of the property with a non FmHA loan, the State Director may authorize the payment by FmHA of not more than three discount points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will not be paid to reduce the interest rate to be paid by the purchaser. The payment will be deducted from the funds to be received by FmHA at closing.

§ 1955.120 [Reserved]

Chattel Property

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122 through 1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days after acquisitions, assistance will be requested as outlined in § 1955.143 of this subpart.

(a) *Regular sale.* Chattels may be sold by FmHA employees at market value to eligible applicants. Form FmHA 440–21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(b) *Auctions.* Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction conducted at a facility that is widely advertised and that is held on a regularly scheduled basis. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(c) *Sealed bid sales.* Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

(d) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955–47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this Chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed five years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440–1 (available in any FmHA office). Forms FmHA 431–2 or CFS, Form FmHA 440–32, "Request for Statement of Debts and Collateral, or any other financial statement considered appropriate may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of FmHA Instruction 1901–A (available in any FmHA office).

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in access of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer will be documented by Form FmHA 1955–46, or by Form FmHA 1955–45 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title.* Title will be transferred to a purchaser in accordance with § 1955.141(b) of this subpart.

(d) *Reporting sale.* Sales will be reported in accordance with § 1955.142 of this subpart.

(e) *Reporting and disposal of inventory property not sold.* Refer to §§ 1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory

accounts based on the value of the property sold. Form FmHA 440–21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale on Form FmHA 1955–45 or Form FmHA 1955–46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§§ 1955.125–1955.126 [Reserved]

Use of Contractors To Dispose of Inventory Property

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instructions 1955–D and 2024–A (available in any FmHA office) are applicable for procurement of the nonpersonal services.

§ 1955.128 Appraisers.

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator for Housing when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision will be based on availability of comparables, capability and availability of personnel and the number and type properties (such as large farms and business property) requiring valuation. Contract appraisers should be "designated" (i.e., an appraiser designated by major appraisal organizations, such as Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers). Appraisers may not purchase property they have appraised.

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed by Exhibit C of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they are doing business.

(a) *Type of listings.* The State Director may elect to authorize use of open listings, exclusive listings, or combinations thereof during any calendar year as follows:

(1) *Exclusive listing contract.* An exclusive listing contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for a specified property or type property. Since the commission rate is pre-established, additional criteria will be specified in the solicitation together with the numerical weighting system to be used (usually 1–100). Responses will be calculated on the basis of criteria such as personal qualifications, membership in Multiple Listing Services, previous dealing with FmHA, advertising plans, innovative promotion methods proposed, and financial capability. The responsibilities of the broker under the exclusive listing contract exceed those of the open listing agreement.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed consistent with the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, concurrently with a notice to all brokers in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially in accordance with the example given in Exhibit B of this subpart (available in any FmHA office). An open listing agreement may be executed at any time showing the property.

(b) *Listing notices.* Form FmHA 1955–40 will be used to provide brokers with notice of initial listing, withdrawals, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* Offers will be given priority in the order received; however, all offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Suitable SFH.* See § 1955.114(a) of this subpart.

(2) *Suitable MFH.* Offers will be considered from eligible applicants only.

(3) *Unsuitable SFH.* See § 1955.115(a) of this subpart.

(4) *Unsuitable MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.106 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale. However, other offers will be held by FmHA pending any administrative price reduction, prior sale, withdrawal, or expiration of offer.

(e) *Earnest money.* Earnest money in the amount specified in paragraph (e)(1) of this section will be collected when a sales contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single-family residence or multiple-family residence of 2 to 4 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

(f) *Commission.* The broker's commission is contingent on the closing of the sale and will not be paid until the sale is closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, the broker's salesperson(s), to persons living in his/her or salesperson's immediate household or to legal entities in which the broker or salesperson(s) have an interest. Commissions will be paid at closing only if sufficient cash to cover the commission is paid by the purchaser. Otherwise the commission will be paid by the appropriate FmHA official completing a Standard Form 1034 and submitting Form FmHA 2024–1, for payment to be charged as a nonrecoverable cost to the inventory account. A uniform fee or commission schedule, by property type, will be established by the State Director within a given sales area and will not exceed commissions paid for similar types of services provided by the broker to other sellers of similar real property. (The percentage normally decreases as the value of the property increases over $100,000.) The State Director, without authority to redelegate, may authorize fixed amount bonuses for special-effort property, such as property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period where it is believed an added bonus will create additional efforts by the broker to sell the property. Commissions for sealed bids procured through brokers may be authorized by the appropriate Program Assistant Administrator upon written request by the State Director.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Forms FmHA 1955–42 and FmHA 1955–43 (available in any FmHA office). In addition, all brokers participating in the sale of the property shall sign the nondiscrimination certification on Form FmHA 1955–45.

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA Instruction 2024–A (available in any FmHA office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* The commission to be paid is normally the customary auctioneer's fee for the area for the type of property being sold. Payment will be made in the same manner as provided for brokers in § 1955.130(f) of this subpart.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his/her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

§ 1955.132 [Reserved]

General

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA 400–4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to FmHA an acceptable form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All FmHA and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an Act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA, FmHA will reappraise the property. The reappraised value of the property will serve as the amount FmHA will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA is less that $500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made to eligible purchasers to correct defects.

§ 1955.135 Taxes on inventory real property.

Where FmHA owned property is subject to taxation, taxes will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Form FmHA 1955–45 or Form FmHA 1955–46. The purchaser will be responsible for paying all taxes due and payable after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessments for property improvements (water, sewer, curb and gutter, etc.) due and payable as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, taxes and assessments due to be paid by FmHA will be paid by voucher, if the local taxing authority will accept payment at the time, or will be deducted from the selling price. However, for eligible borrowers other than MFH who lack payment ability, FmHA may pay the prorated taxes and assessments by use of Standard Form 1034 and Form 2024–1, when later due and payable, in lieu of deduction from the selling price at closing.

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an environmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for

those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500–3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farm lands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland, or Coastal Barrier Resources System (CBRS)*—(1) *Use restrictions.* Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property in floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law, as determined by the FmHA official responsible for the conveyance. Applicable restrictions will be incorporated into quitclaim deeds in format similar to that contained in § 1955.116(c) of this subpart with the advice and approval of OGC. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA servicing official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released by the State Director. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will not be sold for residential purposes unless determined by the County Supervisor or District Director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants). Prior written notice of the specific hazard must be given to prospective purchasers. The notice will be prepared in accordance with the following:

(i) *Property offered for sale by FmHA.* The County Supervisor or District Director will inform prospective purchasers at the time of the first inquiry and in any notice of public sale that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location. The County Supervisor or District Director will also prepare and deliver a written notice to the prospective purchaser at the time the bid or offer to purchase is signed by the purchaser. The prospective purchaser will acknowledge the receipt of the notice. Exhibit A of this subpart (available in any FmHA office) may be used as a guide for preparing the notice and the acknowledgment. The acknowledgment will be placed in the County or District Office inventory file.

(ii) *Property offered for sale through real estate brokers or auctioneers.* If real estate brokers or auctioneers are engaged to sell inventory property, they must notify prospective purchasers in writing that the property is located in a special flood, mudslide hazard, or wetland area and specify any use restrictions resulting from this location.

(A) When sending Form FmHA 1955–40 or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

(B) After the prospective purchaser signs the acknowledgment, the broker or auctioneer will forward it to the County Supervisor or District Director, as appropriate, with Form FmHA 1955–45 or Form FmHA 1955–46.

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on eligible and ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitation outlined in Exhibit C, Paragraph 3 (b) (1) and (2) of Subpart G of Part 1940 of this chapter.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, *no* credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan or any other type of federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purpose of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (b)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (b)(3)(ii) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the FmHA official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See Subpart F of Part 1901 of this chapter for

additional guidance.) To determine the former, the current listing of the Register is reviewed. To determine the latter, the State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria is met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historic/archaeological importance or has apparent significant architectural features or is similar to other FmHA properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) When consultation is not required based upon the above criteria, the responsible FmHA official shall note in the inventory file the basic reason why no consultation was necessary. For example, the running record may indicate the property to be conveyed may be a standard, 10-year-old, single-family house, a check may have been made with a local historical society on a less obvious property or the property may have been previously cleared.

(3) If the result of the consultations with the SHPO is that a property may be eligible or that is questionable, an official determination must be obtained from the Secretary of the Interior. The State Office should be contacted for assistance in obtaining this determination. The National Office Program Support Staff is also available to assist the State Office.

(4) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the FmHA official responsible for the conveyance must consult with SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests. The Advisory Council on Historic Preservation must be consulted by the State Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(5) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidders or purchasers through a notice procedure similar to that in § 1955.137(b)(2) of this subpart.

(c) *Highly erodible farmland.* (1) The County Supervisor will determine if any farmland inventory property contains highly erodible land as defined by the SCS and, if so, what specific conservation practices will be made a condition of a sale of the property. This should be done by reviewing the conservation plan prepared for the inventory property. See § 1955.64(a)(3) of Subpart B of this part. If this review determines that sufficient information does not exist on the location(s) of highly erodible land or recommended conservation practices, the SCS shall be contacted and requested to provide the necessary information.

(2) If the County Supervisor does not concur in the need for a conservation practice(s) recommended by SCS, any differences shall be discussed with the recommending SCS office. Failure to reach an agreement at that level shall require the State Director to make a final decision after consultation with the SCS State Conservationist.

(3) Whenever SCS technical assistance is requested in implementing these requirements and SCS respond that it cannot provide such assistance within a time frame compatible with the proposed sale, the County Supervisor will determine if the sale arrangements should go forward or be delayed. If the property either is known to contain highly erodible land or there is visible evidence of erosion problems, a sale of the property will be delayed until SCS can respond. Otherwise, the sale may proceed, conditioned on the requirement that a purchaser will immediately contact SCS and have a conservation plan developed. The County Supervisor will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining SCS assistance, the State Director should consult with the SCS State Conservationist. The potential for response to problems arising can be diminished by ensuring that all farmland in inventory has a conservation plan developed in accordance with § 1955.64(a)(3) of Subpart B of this part and that SCS assistance is requested immediately after acquiring title.

(4) The steps taken and results achieved in order to comply with the provisions of this paragraph shall be documented in the environmental review conducted for the proposed sale. All prospective purchasers must be made aware at the time of first inquiry of the conservation practices to be required. Therefore, the environmental review must be completed as soon as possible after acquiring title to the property.

§ 1955.138 Property subject to redemption rights.

Routine care and maintenance will be provided according to § 1955.64 of Subpart B of this part to preserve and protect the property; however, repairs are limited to those essential to prevent further deterioration of the property and protect the Government's interest. Repairs and rehabilitation needed to return the property to program standards, either under contract by FmHA or financed with an FmHA loan, must be deferred until expiration of the redemption period. If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) Since property sold subject to redemption rights will be sold "as is," credit sale to eligible applicants is precluded unless the property fully meets FmHA standards for the applicable loan program "as is."

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provision of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

§ 1955.139 Disposition of real property rights and title to real property.

(a) Easements, rights-of-way, development rights, restrictions or the equivalent thereof. The State Director is authorized to convey these rights for conservation purposes, roads, utilities, and other purposes as follows:

(1) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values

must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) For farm properties only, easements, restrictions, or the equivalent thereof may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a unit of local, State, or Federal Government or a private nonprofit organization.

(i) Conservation purposes include but are not limited to protecting or conserving the following environmental resources or land uses:

(A) Fish and wildlife habitats of local, regional, State or Federal importance,

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990,

(C) Highly erodible land as defined by SCS,

(D) Important farmland, prime forest land, or prime rangeland as defined in Departmental Regulation 9500–3, Land Use Policy.

(E) Aquifer recharge areas of local, regional or State importance,

(F) Areas of high water quality or scenic value, and

(G) Historic and cultural properties.

(ii) Development rights may be sold for conservation purposes for their market value directly to a unit of local or State government or a private nonprofit organization by negotiation.

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local State or federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the FmHA financial interest, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus. Sales proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter. Conveyances shall include terms and conditions which clearly specify the property interest(s) being conveyed as well as all appropriate restrictions and allowable uses. The conveyance shall also require the owner of such interests to permit the FmHA, and any person or government entity designated by the FmHA, to have access to the affected property for the purpose of monitoring compliance with terms and conditions of the conveyance. To the maximum extent possible, the conveyance should designate an organization or government entity for monitoring purposes. In developing the conveyance, the approval official shall consult with any State or federal agency having special expertise regarding the environmental resource(s) or land uses to be protected.

(4) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interest will be sold with the surface land and will not be sold separately, except as provided in paragraph (a) of this section and in § 1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessees or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the property is appraised.

(c) *Transfer of farm inventory property for conservation purposes.* (1) In accordance with the provisions of this paragraph, FmHA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property meeting any one of the following three critaria and subject only to the leaseback/buyback and dwelling retention rights of all previous owners and operators having been met.

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that SCS has determined to be either highly erodible or generally not suited for cultivation, such as soils in classes IV, V, VII or VIII of SCS's Land Capability Classification, or

(ii) A predominance of land being environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500–3.

(B) Riparian zones and floodplains as they pertain to Executive Order 11990.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resources Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (e.g., Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharge areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are inholdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to development if such development would adversely affect the existing Federally or State-owned lands.

(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) Whenever a State or Federal agency requests title to suitable or surplus property, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based on demonstrated capability and experience in processing such transfers. The State Director will provide the following information regarding the request:

(i) Certification that the rights of all prior owners and other individuals, as outlined in Exhibits I and J of Subpart S of Part 1951 of this chapter, have expired.

(ii) Determination that the land is suitable or surplus and the rationale for that determination.

(iii) A statement of the factual basis for determining the land to be of marginal value for agricultural production, environmentally sensitive, or having special management importance, with particular discussion of any national benefits to be achieved (e.g., migratory bird and wetland conservation).

(iv) Identification of the requesting agency and the recommended conservation use if a transfer of inventory land were to occur.

(v) Views of the U.S. Fish and Wildlife Service relative to the need for wetland and floodplain deed restrictions as required by § 1955.137(b) of this subpart. These deed restrictions must be in effect at the time of transfer of inventory lands to any non-Federal entity. Transfer to another Federal entity will only be considered where proper wetland and floodplain conservation precautions have been agreed to by the Federal entity.

(3) *Determining priorities for transfer of inventory lands.* (i) A Federal entity will be selected over a State entity since the transfer of inventory land involves Federally owned/administered land.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(4) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (e.g., Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to habitat of National importance (e.g., wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without reimbursement, over other land disposal alternatives.

(5) An individual property may be subdivided into parcels and a parcel(s) can be transferred under the requirements of this paragraph as long as the remaining parcel(s) to be sold make up a viable sales unit, suitable or surplus.

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is classified surplus because it is larger than a family-size farm, the State Director will subdivide the property into one or more suitable farm tracts and sell the suitable tracts to eligible applicants in accordance with § 1955.106 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of the property must not change its character from suitable to unsuitable or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110 percent of the portion of the outstanding loan prorated to the property released.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block if it is determined this will facilitate the sale.

§ 1955.141 Transferring title.

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director. This authority may not be redelegated. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where the funds are being disbursed by the closing agent.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the County Supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH suitable real property sold to eligible applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and sewage systems are functional and adequate for property not being served by public water sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to eligible applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter, respectively.

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

§ 1955.143 Report on inventory property not sold.

For any unsuitable or surplus real or chattel property not sold within 18 months (6 months for chattel) after acquisition the County Supervisor or District Director will send the inventory file, advertisements, and a summary of the facts covering the efforts to sell the property to the State Director for further guidance. If the property is not sold within an additional 6 months (3 months for chattel), the State Director will send the package to the appropriate Assistant Administrstor for advice.

§ 1955.144 Disposal of surplus property to, through, or acquired from other Agencies.

(a) *Property which cannot be sold.* If unsuitable or surplus real or chattel property cannot be sold (or only token bids are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule B)," with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office.

(b) *Urban Homesteading Program (UH).* Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA single family residential properties sold through the HUD–UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration and the Secretary of Housing and Urban Development" dated October 2, 1981. (See Exhibit C of this subpart.)

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation or to make suitable property more suitable. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be unsuitable for program purposes due to location and where it is economically feasible to relocate the structure thereby making it suitable, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining unsuitable parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined unsuitable for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make otherwise unsuitable property suitable, if economically feasible.

§ 1955.146 Advertising.

(a) *General.* The success of any sales effort is highly dependent on vigorous advertising which covers the potential market. The primary means of advertisement available to the County Supervisor, District Director, or State Director are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notices using Form FmHA 1955–41, "Notice of Sale," "synopsis" advertising in accordance with § 1955.157 of FmHA Instruction 1955–D (available in any FmHA office), and notification of known interested parties. Other innovative means are encouraged, such use of a display board in the FmHA office with photographs and Form FmHA 1955–40 posted together to solicit applicant and broker interest; posting of Form FmHA 1955–41 at employment center; door-to-door distribution of the notice to apartment dwellers and advertisements in magazines or other periodical publications. An example of newspaper advertising is provided in Exbibit B of this subpart (available in any FmHA office). Advertisement costs will be paid by using Standard Form 1143 and Form FmHA 2024–1. Appropriate FmHA officials will make sure that, where contractually required, brokers and auctioneers provide adequate, timely advertising. When property is being sold by FmHA or by use of open listings with brokers, it is the servicing official's responsibility to insure the adequate advertising of each property. A statement must be included in any advertising stating the amount of FmHA's preference for cash offers in conformity with the applicable sections of this subpart, depending on the type property being advertised.

(b) *Large-value and complex properties.* Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *Racial and socio-economic considerations.* In accordance with the policies set forth in § 1901.203(c) of Subpart E of Part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of

existing racial or socio-economic patterns are reached.

(d) *Rejected application for SFH loan.* If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

§ 1955.147 Sealed bid sales.

Before the sealed bid sale, the appropriate FmHA official will determine and document the minimum sale price, if any, and whether or not credit will be offered. Credit may be offered to facilitate the sale; however, the term will *never* be longer than the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with an accompanying deposit of not less than ten percent (10%) of the bid in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. The bid will be considered delivered when actually received at the FmHA office in a sealed envelope marked as follows:

SEALED BID OFFER

Date of Bid opening _____
FmHA Advice No. _____
Property Address or Location _____

(a) *Opening bids.* Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other FmHA employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. Preference will be given to a cash offer which is at least (*) percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

Otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955–46. The approval official will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the down payment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

(c) *Unsuccessful bids.* Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids.* Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA official approving the sale.

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted according to Form FmHA 1951–B (available in any FmHA office) for application to the General Fund. However, if a credit sale complying with the FmHA notice is an element of the offer and FmHA disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale or direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.107(c) of this subpart except that the established minimum sale price shall remain unchanged.

§ 1955.148 Auction sales.

Before an auction, the State Director, with advice of the National Office for organizational property, will determine and document the minimum acceptable price, if any, whether or not a credit sale will be offered and the minimum down payment; and whether an FmHA, employee or contract auctioneer will conduct the auction sale. The State Director may authorize the use of a professional auctioneer if the value of the property or the complexity of the sale make it advisable, if no qualified FmHA employee will be available or if otherwise considered in the best interest of the Government. This will be handled by contract in accordance with FmHA Instructions 1955–D and 2024–A (available in any FmHA office). Chattel property may be sold at a public auction that is widely advertised and held on a regularly scheduled basis without solicitation. At the auction, successful bidders will be required to make a deposit of not less than ten percent of their bid in the form of cashier's check, certified check, postal money order or bank draft payable to FmHA or to the contracting auctioneer, if applicable. Cash and personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. The high bid will be reduced to writing on Form FmHA 1955–46. Where credit sales are to be allowed, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential bidders. This may include submission of letters of credit or financial statements prior to the auction. When the highest bid is lower than the "minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or, in turn, next higher bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951–B. The bid deposit will be remitted only when the bidder defaults; otherwise, pursuant to agreement between the approval official and the purchaser, it will be applied to the closing costs or down payment, or will be deducted from the selling price in a cash sale. The closing will be conducted in accordance with the procedures prescribed in this subpart for cash sales or credit sales on ineligible terms according to the type property and program involved.

§ 1955.149 Exception authority.

(a) The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute of other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this

authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for such land.

§ 1955.150 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with the State laws or only as specifically authorized in this instruction to provide guidance to FmHA officials. State supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

PART 1962—PERSONAL PROPERTY

52. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

53. Section 1962.4 is amended by adding an introductory paragraph and by revising paragraph (c) to read as follows:

§ 1962.4 Definitions.

As used in this subpart, the following definitions apply:

* * * * *

(c) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * *

54. Section 1962.6 is amended by revising paragraphs (c)(1)(iv), (c)(2)(ii) and (c)(3)(ii) to read as follows:

§ 1962.6 Liens and assignments on chattel property.

* * * * *

(c) * * *

(1) * * *

(iv) For only the amount anticipated for payment as indicated on Form FmHA 1962.1, "Agreement for the Use of Proceeds/Release of Chattel Security," of the applicable cropland cotton, rice, wheat and feed grain programs.

(2) * * *

(ii) Obtain assignments from selected borrowers on Form ASCS–36, "Assignment of Payment," which will be obtained from the ASCS County Office.

(3) * * *

(ii) Checks obtained as a result of an assignment will be made only to FmHA, and the proceeds used as indicated on Form FmHA 1962–1.

55. Section 1962.8 is amended by revising the introductory text to read as follows:

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Such liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

* * * * *

56. Section 1962.13 is amended by revising the introductory text to read as follows:

§ 1962.13 Lists of borrowers given to business firms.

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. County Supervisors should prepare the list of potential purchasers' which are named on the borrower's Form FmHA 1962–1. FmHA will not distribute the Form FmHA 1962–1.

* * * * *

57. Section 1962.17 is amended by revising paragraphs (a)(2), (b)(2) and (b)(5) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) * * *

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1962–1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is a current Form FmHA 1962.1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given Attachment l of Exhibit A of Subpart S of Part 1951 of this chapter, written explanation of the reasons for denial, and an opportunity for an appeal in accordance with Subpart B of Part 1900 of this chapter. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time. Immediately upon determining that the borrower does not have a current Form FmHA 1962–1 in the file, the County Supervisor should also begin working with the borrower to develop one.

(b) * * *

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to FmHA can be used as follows:

(i) Form FmHA 1962–1 must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and Commodity Credit Corporation payments so that the borrower can pay essential family living and farm operating expenses.

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses: Household operating; food including lunches; clothing and personal care; health and medical expenses including medical insurance; house repair and sanitation; school, church, recreation; personal insurance; transportation; furniture; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreements; rent on equipment, land, and buildings; feed for animals; seed; fertilizer; pesticides, herbicides, and spray materials; farm supplies not included above; livestock expenses including medical supplies, artificial insemination and veterinarian bills; machinery hire; fuel and oil; personal property tax; real estate taxes; water charges; property and crop insurance; auto and truck expenses; utilities payments; and payments on contracts or

loans secured by farmland, necessary farm equipment, livestock, or other chattels.

(iii) All of the items listed in paragraph (b)(2)(ii) of this section may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation and what would be an efficient method of production considering the borrower's resources. The County Supervisor will refer to Exhibit E of this subpart (available in any FmHA office) for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released.

(iv) Proceeds can be applied to the FmHA debt.

(v) Proceeds can be used to purchase property better suited to the borrower's need if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtedness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(vi) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(vii) Property can be exchanged for property which is better suited to the borrower's need if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(viii) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that FmHA obtains a lien (or assignment) on the livestock and livestock products at least equal to the lien on the crops.

* * * * *

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962–1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form FmHA 1962–1, the borrower must obtain FmHA's consent before the disposition or before the proceeds are used. FmHA *must* give consent for the release of normal income security if the change is necessary for the borrower to meet essential family living and farm operating expenses. FmHA *must* also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor *must* revise the Form FmHA 1962–1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change (examples of major changes are: feeder pig to sow operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962–1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see § 1924.57(d) of Subpart B of Part 1924 of this chapter.

* * * * *

58. Section 1962.29 is amended by revising the introductory text of paragraph (b), redesignating paragraphs (b)(2) through (b)(4) as (b)(3) through (b)(5) and adding a new paragraph (b)(2) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

* * * * *

(b) *Insurance premiums.* County Supervisor are authorized to approve bills or invoices for payment of insurance premiums on chattel and crop security from FmHA loan funds when:

* * * * *

(2) Anticipated crop income does not materialize which would normally be released for the payment of crop insurance.

* * * * *

59. Section 1962.30 is amended by redesignating paragraphs (b)(2) through (b)(9) as (b)(3) through (b)(10) and adding a new paragraph (b)(1) to read as follows:

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

* * * * *

(b) * * *

(1) A subordination for an annual production loan, only to a delinquent borrower, may also be approved if the borrower meets the requirements set out in § 1941.14 of Subpart A of Part 1941 of this chapter.

* * * * *

60. Section 1962.34 is amended by revising paragraph (a)(2) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(a) * * *

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA 460–9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 1965–13, "Assumption Agreement (Farmer Programs Loans)." The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

* * * * *

61. Section 1962.40 is amended by revising the introductory text of paragraph (b), paragraph (b)(3), and the introductory text of paragraph (e)(1) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart

will be followed. In all other cases, when the County Supervisor, with the advice of the District Director determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section. In farmer program loans cases, borrowers must receive Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

* * * * *

(3) *Agreement with borrower.* If the borrower does not request a hearing, fails to return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter within 45 days, or indicates on Attachment 2 that servicing is not requested, the County Supervisor should send Attachments 9 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter. After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account, the County Supervisor may allow the borrower 60 days to accomplish such action by:

(i) Selling the security in accordance with § 1962.41 of this subpart,

(ii) Transferring the security in accordance with § 1962.34 of this subpart,

(iii) Conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or

(iv) Refinancing the debt with another lender.

* * * * *

(e) * * *

(1) After Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter have been sent and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

* * * * *

62. Section 1962.41 is amended by revising the introductory paragraph and revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter before any sale occurs.

* * * * *

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, the County Supervisor will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to FmHA when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan account(s). If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the Committee, and be further processed and approved in accordance with § 1962.34(h) of this subpart:

In our opinion *(name of Borrower and any co-signer)* does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction.

If a release from liability cannot be granted, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in FmHA office). The account will then be considered for debt settlement.

63. Section 1962.42 is amended by revising the introductory texts of paragraphs (a) and (c)(5)(i), and paragraphs (c)(5)(ii), (c)(6)(ii)(A), and (d) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security on EO property by the County Supervisor.

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security, a borrower and all cosigners on the note must receive Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and any appeal must be concluded. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

* * * * *

(c) * * *

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 1955–41, "Notice of Sale," may be used for public or private sales.

* * * * *

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA 1955–41 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) * * *

(ii) * * *

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 1955–41, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

* * * * *

(d) *Risk of injury.* If a farmer program loan borrower has abandoned security *and* the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section and then send the borrower and all cosigners on the note Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until any appeal is concluded or the borrower has waived or forfeited the opportunity to appeal. When the appeal is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of the appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, and this determination will be made by the County Supervisor. However, an independent third-party (not an FmHA employee) must determine that livestock are in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

64. Section 1962.47 is amended by revising paragraph (a)(3) to read as follows:

§ 1962.47 Bankruptcy and insolvency.

(a) * * *

(3) The County Supervisor will send Attachments 1 and 2 of Exhibit A (and not Exhibit A) of Subpart S of Part 1951 of this chapter together with Exhibit D of this subpart, "Notice to Borrower's Attorney Regarding Loan Servicing Options," (available in any FmHA office) to the attorney of a farmer program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. A dated copy of Exhibit D of this subpart will be sent to OGC and the U.S. Attorney's office at the same time. Exhibit D of this subpart explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly.

(i) Exhibit D of this subpart also explains that borrowers who have filed Chapter 11, 12 and 13 bankruptcies must request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief or dismiss their bankruptcies. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. Until the automatic stay is modified for this purpose or the Chapter 11, 12, or 13 is dismissed, FmHA will not discuss any of the servicing options with either the borrower or the borrower's attorney. If the automatic stay is not modified for the limited purpose set out above or if the bankruptcy case is not dismissed, but the borrower instead files a plan of reorganization which restructures the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of FmHA's recommendation for voting on the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations.

(ii) Borrowers who have filed Chapter 7 bankruptcies also must either dismiss their bankruptcies or request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. FmHA will not discuss any of the options with either the borrower or the borrower's attorney until the automatic stay is modified for the limited purpose set out above, or the Chapter 7 is dismissed. Exhibit D of this subpart explains that FmHA will not continue with a debtor who does not reaffirm the FmHA debt. If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation.

* * * * *

65. Section 1962.49 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 1962.49 Civil and criminal cases.

* * * * *

(c) * * *

(1) *County Office actions.* Forms FmHA 455–1, "Request for Legal Action," and FmHA 455–22 will be prepared. Form FmHA 455–2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA 455–1 and FmHA 455–22 and, when applicable, FmHA 455–2 together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA 455–1. Appropriate recommendations regarding civil actions will be made on Forms FmHA 455–1 and FmHA 455–22 against the borrower or others. When a case is referred to the State Office the County Supervisor will keep that office informed of any future developments in the case. If Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions.* Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded.

* * * * *

66. Exhibit B of Subpart A is revised to read as follows:

Exhibit B—Memorandum of Understanding and Blanket—Commodity Lien Waiver

The Farmers Home Administration (FmHA) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA and CCC in and without undue inconvenience to producers and FmHA and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA will try to furnish a complete and current list of the names of such producers; however, FmHA's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA and the producer if (a) his name is on the list furnished by FmHA, or (b) he names FmHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, tbe security interest of FmHA in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect

the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Date: July 20, 1980.

Ray V. Fitzgerald,

Executive Vice President, CCC.

Date: July 14, 1980.

Gordon Cavanaugh,

Administrator, FmHA.

67. Exhibit D to Subpart A is revised to read as follows:

Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options

Procedure Reference: FmHA Instruction 1962–A

Purpose: Used by a County Supervisor to send with Attachments 1 and 2 of Exhibit A (*not* Exhibit A) of Subpart S of Part 1951 of this chapter to the borrower's attorney when the borrower has filed bankruptcy. A dated copy of this letter will be sent the United States Attorney's Office and OGC when it is mailed to the borrower's attorney.

Return Address

Borrower's Attorney Address

_____

_____

_____

Dear

We were recently notified that your client _____ (name of borrower) has filed bankruptcy. The enclosed forms explain some of the loan servicing options that FmHA has available. We would appreciate your informing your client of these options. Each of these options is available only when there is a valid enforceable debt. It appears that the result of the bankruptcy will be to make some or all of the FmHA debt unenforceable. This will make your client ineligible for FmHA's debt servicing options. In addition in order to ascertain whether your client is eligible for these options it is necessary for FmHA's employees to work closely with your client. We are concerned about whether such contact will be in violation of the automatic stay.

[If your client has filed under Chapter 7 and wants to apply for servicing relief from FmHA, the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. A sample motion and order are available from the U.S. Attorney's office. After dismissal or modification of the automatic stay, your client must complete and return Attachment 2 to Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. So long as the Chapter 7 is pending FmHA will not discuss any of the servicing options with you or your client unless the automatic stay is modified. Also, in order for FmHA to continue with your client after a discharge, your client must reaffirm the FmHA debt.]*

[If your client has filed under Chapter 11, 12 or 13 and wants to apply for servicing relief from FmHA the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief or the case must be dismissed. A sample motion and order are available from the U.S. Attorney's office. After dismissal or modification of the automatic stay, your client must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. Unless the automatic stay is modified for this purpose or the case is dismissed, FmHA will not discuss any of the servicing options with you or your client. You may, of course, choose to file a proposed plan which may or may not contain debt restructuring features similar to those available from FmHA.]*

If you intend to file a motion to allow your client to request and be granted servicing relief, we ask that you do so within 30 days. If no motion is filed within that time, we will assume that your client does not intend to make a request for servicing and we will proceed to protect our interests as allowed by the Bankruptcy Code.

FmHA's farmer programs debt servicing regulation is found at 7 CFR, Part 1951, Subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor.

*Choose applicable paragraph.

67a. Exhibit E to Subpart A is added to read as follows:

Exhibit E—Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operating Expenses

Note.—Exhibit E referenced in this subpart is available in any FmHA office.

PART 1965—REAL PROPERTY

68. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

69. Section 1965.7 is amended by redesignating paragraphs (a) through (k) as (b) through (l), adding a new paragraph (a) and an introductory paragraph to read as follows:

§ 1965.7 Definitions.

As used in this subpart, the following definitions apply:

(a) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * *

70. Section 1965.11 is amended by revising paragraphs (c)(2)(i)(C), (c)(2)(ii), and (c)(3) to read as follows:

§ 1965.11 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) Loans may be reamortized without regard to loan limits to include protective advances for payment of the prior lienholder(s) when authorized on an individual case basis by the National Office. When continuation with reamortization to include protective advances for the payment of prior lienholder(s) is recommended, the case file with documentation of all facts of the situation necessitating protective advances, efforts made to obtain a new participating lender, and justification for reamortizing will be submitted to the National Office.

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, the County Supervisor will immediately complete Exhibit B (available in any FmHA office) to this subpart and send it to the borrower along with Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter and blank Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Then one of the following actions will be taken:

(A) *Making a bid.* Bidding will be completed in accordance with § 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid, actions will be taken in accordance with §§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with § 1955.18(f) of Subpart A of Part 1955 of this chapter.

* * * * *

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a

junior lienholder is foreclosing, the County Supervisor will send the borrower Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Attachments 1, 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

71. Section 1965.12 is amended by revising paragraphs (a)(8), (b)(2)(ii)(B) and (g) to read as follows:

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

(a) * * *

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the present market value of the real estate security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total real estate security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized. If the farm tract secures only type(s) of FmHA loan(s) not currently authorized, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12(a)(7) of this subpart.

* * * * *

(g) *Reamortizing existing FmHA debts other than SFH.* The County Supervisor, District Director, or State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet installments when due. Reamortization of farmer program loans will be processed in accordance with Subpart S of Part 1951 of this chapter. Reamortization of SFH loans will be processed in accordance with Subpart G of Part 1951 of this chapter. Refer to § 1965.34(f) of this subpart if an NP loan is involved.

72. Section 1965.13 is amended by revising the introductory paragraph and revising paragraph (f)(4)(ii) to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

If an NP loan is involved, see § 1965.34 of this subpart or see Subpart S of Part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. If a FP loan is being deferred and reamortized as an ST loan, partial releases are authorized as provided in Subpart S of Part 1951 of this chapter. However, there is no authority for FmHA employees to consent to partial release or sale, exchange or other disposition of a portion of the security for an existing ST loan.

* * * * *

(f) * * *

(4) * * *

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with Subpart A of Part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with § 1924.57(b) of Subpart B of Part 1924 of this chapter.

* * * * *

73. Section 1965.17 is amended by revising paragraph (a) to read as follows:

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with § 1965.26(d) of this subpart.

* * * * *

74. Section 1965.25 is amended by revising the introductory texts of paragraphs (a) and (d) to read as follows:

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purpose of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security" unless it is a tract of land that is in addition to the farm real estate. Additional security for a SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and:

* * * * *

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with a SFH loan and located on a *nonfarm*

tract when the junior lien was taken as additional security for a farmer program loan(s), provided the SFH security has been liquidated and there would be no proceeds in excess of the SFH debt to apply to the farmer program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

* * * * *

75. Section 1965.26 is amended by revising paragraphs (a)(2), (b)(1), (c) and (d), and by revising the introductory texts of paragraphs (b), (e) and (f) and removing paragraph (b)(4) to read as follows:

§ 1965.26 Liquidation action.

(a) * * *

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file. If a qualified FmHA appraiser is not available, the State Director may obtain an appraisal outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In farmer program cases borrowers must receive Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* If the borrower fails to return Attachments 2, 4, 8 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter within 45 days, or indicates on these attachments that servicing is not requested, the County Supervisor should send Attachments 9 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter.

* * * * *

(c) *Multiple loans and loans secured by both real estate and chattels.* (1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the time the borrower is sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, except as provided in paragraph (c)(2) of this section.

(2) SFH loans on nonfarm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless it is subject to liquidation based on the provisions of § 1965.125 of Subpart C of this part, taking into full consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be given to continuing with the SFH loan after the other security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) The borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will make a cash payment equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt.

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will make a cash payment of any amount he/she is able to pay, and the lien to secure the FP debt will be released as a valueless lien.

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(iv)(A) of this section, the County Supervisor will have the borrower execute an Agreement similar to Exhibit E of this subpart an Equity Recapture Agreement (available in any FmHA office), pledging to pay to FmHA an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office by sending a letter similar to Exhibit D (available in any FmHA Office) of this subpart (with copy to the State Director) when an Equity Recapture Agreement has been executed, a copy of the Agreement will be attached to the letter. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's FmHA County Office file. The borrower's file will be retained in the FmHA County Office until the equity is paid pursuant to the agreement. The letter will show that a noncash credit in the amount of the Equity Recapture Agreement will be made to the FP loan(s). The letter will also show the fund code and loan number(s) of the loan(s) to which the noncash credit is to be applied. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled, as appropriate. An equity receivable account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the county office will remit collection under the Agreement, in the same manner as a SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form FmHA 451–2, "Schedule of Remittance": EQUITY RECEIVABLE PAYMENT.

(v) FmHA is prohibited by State law from foreclosing the SFH loan when the

nonfarm security is merely additional security for the farmer program loan(s). In this case, the Farmer Program real estate mortgage on the SFH property cannot be released and the Farmer Program debt cannot be settled, unless the conditions set forth in paragraphs (c)(2) (i), (iii), and (iv) of this section are complied with.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farming operation, i.e., management (Example: sharing in day-to-day activities and management decisions as well as the costs and returns of the operation), and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of time, not to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of § 1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with § 1965.26(e) of this subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

* * * * *

(f) *Cash sales.* This paragraph applies to a sale of *all* real estate security. Before any cash sale, farmer program borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and release the Government's liens, provided:

* * * * *

76. Section 1965.27 is amended by removing paragraph (b)(4)(v) and redesignating paragraph (b)(4)(vi) as (b)(4)(v), revising the introductory text of the section and the introductory texts of paragraphs (b) and (b)(5), and revising paragraphs (b)(3), (b)(4)(iv), (b)(5)(i)(C), (c)(1)(iii), (g)(8) and (g)(9) to read as follows:

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access development or other rights is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart or will be handled in accordance with § 1965.27(g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

* * * * *

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," Form FmHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," or Form FmHA 1965–15, "Assumption Agreement (Single Family Housing Loans)," for SFH loans.

* * * * *

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount of principal and interest equal to the present market value as determined under § 1965.26(a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume

the total FmHA secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA 1965–13 and the accrued interest will be computed from Form FmHA 451–26, "Transaction Record," or obtained from the monthly payment account Status Report. Balances may be confirmed through the field office terminal system. The transferee will be informed of the amount of the principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under Subpart S of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) * * *

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursing at closing of the transfer.

* * * * *

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Forms FmHA 450–10, "Advice of Borrower's Change of Address or Name," FmHA 465–5, and FmHA 460–9 must be prepared and distributed in accordance with the FMI in each of the following situations.

(i) * * *

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

* * * * *

(c) * * *

(1) * * *

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) On eligible terms by an immediate family member of an individual borrower; an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative; an entity which is made up of only immediate family members of an individual borrower; or an entity which is made up of only immediate family members of any partner(s), joint operator(s), stockholder(s) or member(s).

(B) On eligible terms by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH," as applicable.

(C) On ineligible terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(g) * * *

(8) *Title clearance and legal services.* Title clearance and legal service for closing transfer(s) will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA 1965–13; 1965–22; 460–9 (as applicable); 1965–23; 451–1, "Acknowledgment of Cash Payment"; and 1965–8, will be prepared and distributed according to the FMI.

* * * * *

77. Section 1965.31 is amended by revising paragraph (a)(2) to read as follows:

§ 1965.31 Taking liens on real estate as additional security in servicing FmHA loans.

* * * * *

(a) * * *

(2) The borrower is delinquent, has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

* * * * *

78. Exhibits A through E are added to Part 1965, Subpart A as follows:

Exhibits to Subpart A

Note: The exhibits referenced in this subpart are available in any FmHA office.

Exhibit A—Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration

Exhibit B—Notification of Prior Lienholders Intent to Foreclosure

Exhibit C—Processing Guide

Exhibit D—Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable

Exhibit E—Equity Recapture Agreement

LaVerne Ausman,

Acting Under Secretary, Small Community and Rural Development.

Date: April 22, 1988.

[FR Doc. 88–11144 Filed 5–20–88; 8:45 am]

BILLING CODE 3410–07–M

federal register

Monday
May 23, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Design Standards for Fuel Tank Access Panels; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 25614; Notice No. 88-10]

Design Standards for Fuel Tank Access Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require that the fuel tank access panels of transport category airplanes be designed to minimize penetration by likely foreign objects, and be fire resistant. This proposed change is based on service experience and is intended to reduce the hazards associated with the loss of access panels. This notice also proposes to require that the panels of all turbine powered airplanes operated in air carrier service after a specified date meet these standards.

DATES: Comments must be received on or before September 17, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25614, 800 Independence Avenue SW., Washington, DC, 20591, or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC, 20591. Comments delivered must be marked: Docket No. 25614. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Iven Connally, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25614." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC, 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Several fuel tank access panels have failed in service due to impact with high speed objects such as failed tire tread material and engine debris following engine failures. In one recent case, the failure of an access panel on a wing fuel tank resulted in the loss of hazardous quantities of fuel which subsequently ignited and destroyed the airplane. This particular access panel was made from an aluminum casting which is susceptible to damage and provides less impact resistance than the surrounding wing skin. These panels are also subjected to elevated temperatures due to landing gear and engine fires.

A data base of incidents and design comparisons shows significant differences in fuel tank access panel location, type of construction, and incidence of penetration among the major transport category airplanes.

Discussion

As a result of these accidents and incidents, the FAA is proposing to amend Part 25 to require impact and fire resistant fuel tank access panels on all transport category airplanes for which application for a type certificate is made after the effective date of the amendment. This proposed rule would assure that access panels on all fuel tanks are designed to minimize penetration by likely foreign objects, and are fire resistant (as defined in Part 1).

The requirement for improved access panels will apply to all fuel tanks regardless of location in the airplane. Typically, airplanes are designed to carry fuel in the wings and fuselage; however, fuel will be carried in the vertical and horizontal tail surfaces on several new designs. Service experience shows those surfaces are also subject to foreign object damage; and fuel tank access panels located on them must be designed to minimize penetration by likely foreign objects and must be fire resistant.

In addition, Part 121 would also be amended to require that the fuel tank access panels on all other turbine-powered, transport category airplanes used in air carrier service meet these improved standards. Reciprocating powered airplanes would not be included since service experience does not indicate that fuel tank access panels on those airplanes have been a safety problem. This is attributed to the lower frequency of reciprocating engine disintegrations, the characteristics of such disintegrations, and the relatively few reciprocating powered airplanes used in air carrier service. The two year compliance period is intended to allow operators and manufacturers time to redesign and produce improved fuel tank access panels with a minimum of disruption to fleet schedules or to production lines.

Regulatory Evaluation

The benefits exceed the cost of implementing this proposed rule.

The costs associated with improved fuel access doors are primarily in the retrofit requirement of Part 121. The cost impact is primarily in retrofitting Boeing airplanes because those airplanes have

fuel access doors located where they can be struck and punctured by debris.

There should be no significant added cost to new type designs that would be required to have the new access doors certified under Part 25, nor should the new doors impose any weight penalty. Since the proposed amendment to Part 25 is expected to result in no identifiable cost, this analysis focuses on the costs associated with the Part 121 requirements.

In order to estimate the cost for retrofitting the fleet, the estimated cost of compliance for a door is multiplied by the total number of doors affected by the proposal.

There are six areas of compliance costs: (1) Design cost, (2) testing cost, (3) certification cost, (4) manufacturing cost, (5) installation/ retrofit cost, and (6) weight penalty cost. For all cost areas, this analysis estimates only the incremental costs associated with the proposal.

Boeing was required by airworthiness directive, to design improved doors for the Model Boeing 737. They have already designed and tested their new doors, so the incremental design costs and testing costs for Boeing are zero. The administrative processing cost for certification is negligible. Manufacturing cost, based on the replacement cost of an existing door as quoted by airline operators, is estimated at $210 per door, or $5,630,000 fleet cost (26,812 x $210). Installation/retrofit costs are based on a manufacturer's service bulletin which provides cost estimates for replacement of existing doors. In addition to the manufacturing cost, there would be an installation cost of $270 per door which includes six (6) hours of labor at $40 per hour plus $30 for a gasket seal. This would amount to $7,239,000 total installation cost for the fleet (26,812 x $270). There would be no discernible weight penalty cost.

The total cost for manufacturing the doors and retrofitting the fleet to comply with the proposed change to Part 121 amounts to $12,869,000.

The benefit of this proposal is the elimination of the current risk that a fuel access door will be punctured by debris. An estimate of the potential benefits can be made from the air carriers' recent experiences. Based on these experiences, the potential monetary benefits that might be gained by avoiding another accident like the Boeing 737 disaster in Manchester, England, on August 22, 1985, amount to more than $61 million (over $55 million in lives lost in that accident plus the replacement value of the airplane, which exceeds $6 million).

Data on the average number of revenue passengers on board airplane flights in 1984 indicate the prospective number of passenger lives that might be saved by preventing a fatal accident on an affected Boeing airplane. The average revenue passengers per domestic airplane mile in 1984 on Boeing airplanes ranges from approximately 62 on the Boeing 737 to 274 passengers on the Boeing 747. Clearly the 55 fatalities in the Manchester accident represents the extreme low end of the distribution of potential fatalities that might occur in an accident on a Boeing airplane with an average number of passengers on board.

At least one airplane accident should be avoided in the next 20 years based on experience during the past 20 years.

Over a 20-year time frame there have been 24 incidents, of which one (1) was a fatal accident. The FAA anticipates that without this proposed rule, the trend of incidents would continue and accelerate due to the aging of engines in the fleet, and the resultant increasing amounts of debris associated with engine problems. It is expected that one accident, over the next 20 years, of the magnitude of the Manchester accident will likely be prevented by the rule proposed.

The minimum expected present value benefit ($29 million) would exceed the maximum potential cost ($12,869,000) by approximately $16 million for this proposed rule change assuming the avoidance, for the lifetime of all the Boeing airplanes in the fleet, of a single accident equivalent to the August 22, 1985, Manchester accident on the Boeing 737, which resulted in 55 lives and an airplane lost due to debris penetration of a fuel access door. Were the same accident to occur with a Boeing 747, within a year, the resultant average loss of 274 passenger lives, crew, and airplane would amount to over $300 million. In this potential case, the benefit value would exceed the cost by approximately $290 million, making the cost appear insignificant in comparison.

For a one time investment of less than $13 million, the proposal would ensure that in the future, incidents like those that occurred will be prevented and therefore will not become accidents.

International Trade Impact Assessment

The proposals will have no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

There will be no advantage with respect to future designs for airplanes manufactured in either the United States or foreign countries since the U.S. certification rules are applicable to both foreign and domestic manufacturers which sell in the U.S. Also, because of the large U.S. market, foreign manufacturers usually elect to design their airplanes to U.S. rules. With respect to existing designs, disadvantage to the Boeing airplanes is minimal because the cost of compliance is a negligible amount of the total cost of an airplane.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The proposal in this notice would directly affect those turbine powered transport airplane manufacturers which certify their airplanes under Part 25. FAA Order 2100.14 states a size threshold of 75 employees as a standard for small manufacturers of aircraft. (See FAA Order 2100.14, *Regulatory Flexibility Criteria and Guidance*, dated July 15, 1983.) According to current FAA data, there are no turbine powered airplane manufacturers which meet that standard.

The proposal in this notice would also affect small air carriers which are regulated under Part 121. FAA Order 2100.14 states a size threshold of nine or fewer operating airplanes as a standard for small air carriers. According to data available to FAA for the period ended January 1984, 92 passenger air carriers, which were subject to Part 121, operated nine or fewer airplanes. Of these, 29, or less than one-third, operated with at least one of the affected Boeing airplanes. FAA Order 2100.14 states that a substantial number of small entities means more than one-third of the small entities subject to the proposed rule. However, the Order provides FAA management the discretion to consider a number smaller than one-third to be a substantial number. In this instance, the FAA has judged it prudent to extend the scope of the analysis of the economic impact on small entities, although fewer than one-third (less than a substantial number) are affected by the rule.

The impact on small entities will be in direct proportion to the number of doors they will be required to retrofit on the affected Boeing airplanes. There is a capital cost of $30 for a gasket and a one-time $240 cost for labor, yielding a $270 one-time cost to install each door. The annualized compliance cost for a carrier to meet the retrofit requirements

is $44 per door based upon a 10 percent interest rate and assuming 10 years useful life.

The FAA has adopted threshold values that define significant economic impact, and these values are stated in FAA Order 2100.14. The threshold values for economic impact are adjusted for inflation and are expressed here in 1986 dollars. The threshold value for small entity carriers is a maximum number of nine airplanes owned or operated. The threshold values for significant economic impact are an annualized cost of $94,094 for scheduled carriers that operate airplanes with more than 60 seats.

The FAA has identified the number of each type of Boeing airplanes that each small entity carrier operates under Part 121. The largest number of doors that any of the identified small entity carriers would be required to install is 144. This total is based on replacement of 24 doors on each of six (6) B–707 airplanes. The respective number of doors that would be required to be replaced on each type of Boeing airplane is: B–707/720 (24), B–727 (10), B–737 (10), B–747 (22), B–757 (14), B–767 (14). Since there is an annualized cost of $44 per door to retrofit the Boeing airplanes, and the largest number of doors affected by the proposal for any of the small scheduled carriers is 144, none of these carriers meets the cost impact criteria for the scheduled air carriers (144 × $44 is $6,336, which is less that $94,094; note also that the maximum possible number of doors that could be required to be replaced by a small entity carrier would be 216 doors on a total of 9 airplanes, costing 216 × $44 = $9,504, which is less than $94,094). Therefore, this proposal is not expected to have a significant economic impact on a substantial number of small entity scheduled air carriers, and a regulatory flexibility analysis is not required.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this document is significant as defined in Department of Transportation Regulatory Policies and procedures (44 FR 11034; February 26, 1979). In addition, it is certified under the criteria of the Regulatory Flexibility Act that this regulation, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Flammable materials, Transportation, Common carriers.

The Proposed Amendment

Accordingly, the Federal Aviation Administration (FAA) proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR Parts 25 and 121, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983). 49 CFR 1.47(a).

2. By amending § 25.963 by adding text to paragraph (e) to read as follows:

§ 25.963 Fuel tanks: general.

* * * * *

(e) In order to prevent the loss of hazardous quantities of fuel, all fuel tank access covers must be shown by analysis or tests to:

(1) Be designed to minimize penetration and deformation by tire fragments, low energy engine debris, or other likely debris, if the access panel is located in an area where service experience indicates a strike is likely; and

(2) Be fire resistant.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983), 49 CFR 1.47(a).

4. By amending Part 121 by adding a new section to read as follows:

§ 121.316 Fuel tanks.

Each turbine powered transport category airplane operated after [a date two years after the effective date of this amendment], must meet the requirements of § 25.963(e) of this chapter in effect [the effective date of this amendment].

Issued in Seattle, Washington, on May 10, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–11336 Filed 5–18–88; 2:32 pm]

BILLING CODE 4910–13–M

federal register

Monday
May 23, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11, 21, 23, 25, 34, 45, and 91

Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 23, 25, 34, 45, and 91

[Docket No. 25613; Notice No. 88-9]

Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to replace Special Federal Aviation Regulation (SFAR) 27, as amended through SFAR 27-6, with a new Part 34 of the Federal Aviation Regulations which will include all of the standards and test procedures of 40 CFR Part 87 previously included in SFAR 27. This will codify in a single part all of the applicable requirements of 40 CFR Part 87, Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures, as amended, December 30, 1982, and will insert the requirements to comply with Part 34 in the other affected Parts where applicable. This action is in accordance with section 232 of the Clean Air Act, as amended (42 U.S.C. 7401) and the authority delegated to the Administrator of the FAA by the Secretary of Transportation.

DATES: Comments must be received on or before June 22, 1988.

ADDRESS: Comments on the proposals may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No., 800 Independence Avenue, SW., Washington, DC 20591.

Comments delivered must be marked: Docket No. 25613. Comments may be inspected at Room 916, 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Krull, Manager, Air Quality Staff, AEE-30, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (Telephone: 202-267-8933).

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. However to reflect the division of regulatory responsibility between the Environmental Protection Agency (EPA) in section 231 of the Clean Air Act, as amended (the Act) (42 U.S.C. 7401) and the Secretary of Transportation in section 232 of the Act, comments are not requested herein concerning the substance or the affective date of the already final EPA requirements of 40 CFR Part 87.

Comments that do not involve either the substance or the compliance dates of the provisions of 40 CFR Part 87 that are in this notice should identify the FAA regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, 800 Independence Avenue, SW., Washington, DC 20591. Comments received on or before will be considered by the FAA Administrator before taking action on the proposed rules. The proposals contained in this notice (other than the provisions of EPA Part 87) may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular 11-2 which describes the application procedure.

History

Under section 232 of the Clean Air Amendments of 1970, Pub. L. 91-604, the FAA has a duty to issue regulations that ensure compliance with all aircraft emission standards promulgated under section 231 of the Act, which are currently prescribed in 40 CFR 87 originally issued on July 6, 1973, and published in the **Federal Register** (38 FR 19088) on July 17, 1973.

Accordingly, on December 26, 1973, the FAA issued SFAR 27, published in the **Federal Register** (38 FR 35427) on December 28, 1973. The purpose of SFAR 27 was to ensure compliance with aircraft and aircraft engine emission standards and test procedures issued by the EPA in 40 CFR Part 87.

SFAR 27, as originally issued, governed compliance of only those standards and procedures in 40 CFR Part 87 that were effective beginning February 1,1974. Since its issuance, SFAR 27 has been amended six times by the FAA. On December 23, 1974, the FAA issued SFAR 27-1 (39 FR 45008; December 30, 1974) to require compliance with the fuel venting emission standards in 40 CFR Part 87 that became effective January 1, 1975. SFAR 27-2, effective January 1, 1976 (40 FR 55311; November 28, 1975), governs compliance with smoke emissions standards in 40 CFR Part 87 applicable to new and in-use aircraft turbofan or turbojet engines with a rated power of 29,000 pounds thrust or greater, that are designed for operation on subsonic airplanes. SFAR 27-3 (42 FR 64876; December 29, 1977) required compliance with smoke emissions standards in 40 CFR Part 87 for JT3D engines manufactured on and after January 1, 1978. A fourth amendment, SFAR 27-4 (45 FR 71960; October 30, 1980) was issued to require phased smoke emissions compliance of in-use JT3D engines beginning on January 1, 1981, with total compliance required by January 1, 1985. Subsequently, the requirement for compliance of in-use JT3D engines was automatically deleted under the terms of SFAR 27 Section 3(b) when the EPA deleted the underlying requirement from 40 CFR Part 87 (48 FR 2716; January 20, 1983).

On December 21, 1982, the EPA revised 40 CFR Part 87 and republished the rule in its entirety (47 FR 58462; December 30, 1982). The revised rule contained a number of changes in definitions as well as new standards for smoke and unburned hydrocarbon emissions. Section 87.89 of Title 40 obligated the FAA to establish and approve a testing program to assure compliance with Part 87 by January 1, 1984. On December 8, 1983, the FAA issued amended SFAR 27-5 (48 FR 56735; December 23, 1983) which required compliance with all of the provisions of the revised 40 CFR Part 87 and contained an EPA approved testing program. The effective date of SFAR 27-5 was January 1, 1984. On October 4, 1983, the EPA issued a stay of the January 1, 1984 effective date for EPA's smoke standards, applicable to aircraft turbine engines rated below 26.7 kilonewtons (kN) thrust in response to a petition by the General Aviation Manufacturers Association (GAMA) (48 FR 46481; October 12, 1983). On July 30, 1984, the EPA denied the GAMA

petition and established an August 9, 1985, effective date for smoke standards applicable to aircraft turbine engines rated below 26.7 kN (49 FR 31873; August 9, 1984). On October 9, 1984, the EPA changed the definition of "very low production" engines in the provisions for exemptions and revised the exhaust emission test fuel specification (49 FR 41000; October 18, 1984). On March 18, 1986, the FAA issued amended SFAR 27-6 which changed the authority citations for petitions for exemptions to SFAR 27 (51 FR 10612; March 38, 1986).

Discussion of the Proposal

Overview

When the EPA originally issued 40 CFR Part 87, Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures, in 1973, it was recognized that some portion of the standards could be implemented in a very short time period while other portions would require a much longer time period for developing and testing. Accordingly, the FAA proceeded to promulgate compliance regulations for the near term requirements in the form of a Special Federal Aviation Regulation, SFAR 27. Since that time, the EPA has recognized that some of the longer term requirements were either unneeded or practically unattainable. Those longer term requirements, originally scheduled to become effective in 1978, have been extensively revised. Revised 40 CFR Part 87 now contains all of the known aircraft and aircraft engine emission standards. Under the requirement of section 232 of the Clean Air Act amendments, the FAA has promulgated in SFAR-27 compliance regulations for all of the standards in 40 CFR Part 87.

Proposal to Delete SFAR 27 and Add Part 34

The FAA proposes to comply with section 232 of the Clean Air Act Amendments by establishing a new 14 CFR Part 34 which would contain all of the compliance regulations for fuel venting and engine exhaust emissions, and by revising the other appropriate parts to reflect the requirements to comply with Part 34. Since SFAR 27 and its amendments have been issued, they have, by definition, been considered temporary and their exact status has been confusing to the parties directly or indirectly affected by the regulations. The other parts directly affected by SFAR-27 have heretofore only referenced SFAR-27 and the reader has been required to review SFAR 27 in its entirety in order to determine its effect on that part. Now that 40 CFR Part 87 has been revised in its entirety and is essentially complete, the FAA proposes to codify the compliance regulations in a single part of the Federal Aviation Regulations, and revise the other affected parts accordingly.

Practical Interpretation of the Requirement for Total Compliance

The provisions of 40 CFR Part 87 are applicable to all aircraft gas turbine engines of the classes, and as of the dates, specified in that Part. This generally requires that every engine must comply with the applicable smoke, fuel venting, and emission standards. Enforcement of this total compliance would require testing each and every engine not specifically exempted or manufactured before January 1, 1984. The EPA has recognized in the preamble to 40 CFR Part 87, and specifically in § 87.89, that testing every engine would be excessively costly, and EPA conceded the need to develop a "practical interpretation of the requirement for total compliance and to substitute a preproduction certification program in place of extensive testing of all newly produced and in-service engines. The promulgation of the compliance program has been delegated to the FAA with the provision that the FAA provide a practical interpretation of the requirement for total compliance and establish a testing program to ensure compliance. Any substitute certification program must have the concurrence of the Administrator of the EPA.

In developing the United States position on the International Civil Aviation Organization (ICAO) Standards and Recommended Practices for Aircraft Engine Emissions, the FAA consulted extensively with the EPA on acceptable practical interpretations of a requirement for a total compliance and testing program to ensure compliance. At that time, the EPA indicated that the minimum acceptable levels would be 90 percent confidence that 95 percent of the engines would meet the gaseous emission standards, and a 90 percent confidence that every engine would meet the smoke standards. ICAO adopted such a compliance procedure based upon a composite of historic engine to engine variabilities. Since EPA stressed the desirability of commonality with ICAO, the FAA, with the concurrence of the EPA, adopted the procedure defined in Appendix 6 to ICAO Annex 16 Volume II—Aircraft Engine Emissions, dated 18 February 1982. The FAA has solicited comments and recommendations concerning equivalent procedures and will give any recommendation full consideration if it is accompanied by substantive supporting data. Should an acceptable equivalent procedure be received, the FAA will seek EPA concurrence with that as an alternate compliance procedure. The FAA cannot, however, adopt any proposed compliance procedure unless it has the concurrence of the Administrator of the EPA.

Regulatory Evaluation

Under section 232 of the Clean Air Act Amendments of 1970, Pub. L. 91-604, the FAA has the duty to issue regulations that ensure compliance with all aircraft emissions standards promulgated under section 231 of the Act, which are currently prescribed in 40 CFR Part 87. These standards and their applicability are clearly defined in 40 CFR Part 87, and the FAA has no option but to enforce the standards. Prior to its enactment, the EPA determined that 40 CFR Part 87 would not constitute a major rule as defined by Executive Order 12291 (47 FR 58469; December 30, 1982) because its economic impact was well below the $100 million per year threshold of the Order, and that it did not involve any significant increased costs or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with those of other countries when compared to the present regulations. The information base, including the economic analyses in which this determination was made is collected in Public Docket No. OMSAPC-78-1 at the Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC 20460. The FAA examined in detail and concurred with the EPA economic analysis. On December 8, 1983, the FAA issued amended SFAR 27-5 (48 FR 56735: December 23, 1983) which required compliance with all of the provisions of 40 CFR Part 87. The purpose of the proposed new Part 34 is to replace SFAR 27-5 as a permanent Part in the FAR's and continue the enforcement of 40 CFR Part 87, as required by statute. This action does not in any way change, alter, or modify the standards in 40 CFR Part 87 or the requirements for compliance currently implemented under SFAR 27-5. Therefore, there is no economic cost associated with this action. Proposed Part 34 is easier to review and understand than SFAR 27-5. Therefore, those persons affected by 40 CFR Part 87 would be relieved from a burden, and a slight, unquantifiable benefit is associated with this action. Because the economic impact associated with this

action is so minimal, no further analysis is necessary. Accordingly, the FAA concludes that there is no significant economic impact in this rulemaking action and that this proposal does not constitute a major rule pursuant to Executive Order 12291. The FAA invites comments, supported by economic data, regarding this regulatory evaluation.

Impact on Small Entities

Because of the limited classes of engines to which 40 CFR Part 87 applies, the EPA earlier determined that enactment of that regulation would not have a significant economic impact on a substantial number of small entities (as defined by the Small Business Act). Therefore, no Regulatory Flexibility Analysis was prepared. Interested persons may review the information on which this determination was made at the locations previously mentioned. As the EPA is in a much better position to make a determination in that regard, the FAA adopts that finding. Accordingly, it is certified that the regulations proposed herein, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation, "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D, Appendix 7, paragraph 4, Change 3, December 5, 1986), the FAA is categorically excluded from providing an environmental analysis with regard to the proposed Part 34 because it is mandated by law to issue regulations to ensure compliance with the EPA aircraft emissions standards and the EPA has performed all required environmental analyses prior to the issuance of those standards.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

Information collection requirements contained in this regulation (Sections 9d, 12, and 20) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0508.

The Proposed Amendment

Accordingly, the FAA proposes to amend 14 CFR, Chapter I, by removing SFAR 27 and adding a new Part 34 as follows:

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

SFAR 27—[Removed]

2. By removing SFAR 27.

PART 21—[AMENDED]

3. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

SFAR 27—[Removed]

4. By removing SFAR 27;

5. In § 21.17, the introductory text of paragraph (a) is revised to read as follows:

§ 21.17 Designation of applicable regulations.

(a) Except as provided in § 23.2, § 25.2, and in Parts 34 and 36 of this chapter, an applicant for a type certificate must show that the aircraft, aircraft engine, or propeller concerned meets—

* * * * *

6. In § 21.21, paragraph (b)(1) is revised to read as follows:

* * * * *

§ 21.21 Issue of type certificate: Normal, utility, acrobatic, commuter, and transport category aircraft; aircraft engines; propellers.

* * * * *

(b) The applicant submits the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the Federal Aviation Regulations and any special conditions prescribed by the Administrator, and the Administrator finds—

(1) Upon examination of the type design, and after completing all tests and inspections, that the type design and the product meet the applicable noise, fuel venting, and emissions requirements of the Federal Aviation Regulations, and further finds that they meet the applicable airworthiness requirements of the Federal Aviation Regulations or that any airworthiness provisions not complied with are compensated for by factors that provide an equivalent level of safety; and

* * * * *

7. In § 21.29, paragraph (a)(1)(i) and (b) are revised to read as follows:

§ 21.29 Issue of type certificate: Import products.

(a) * * *

(1) * * *

(i) The applicable aircraft noise, fuel venting and exhaust emissions requirements of this subchapter as designated in § 21.17 or the applicable aircraft noise, fuel venting and exhaust emissions requirements of the country in which the product was manufactured and any other requirements the Administrator may prescribe to provide noise, fuel venting and exhaust emission levels no greater than those provided by the applicable aircraft noise, fuel venting, and exhaust emission requirements of this subchapter as designated in § 21.17; and

* * * * *

(b) A product type certificated under this section is considered to be type certificated under the noise standards of Part 36 and the fuel venting and exhaust emission standards of Part 34 of the Federal Aviation Regulations where compliance therewith is certified under paragraph (a)(1)(i) of this section, and under the airworthiness standards of that part of the Federal Aviation Regulations with which compliance is certified under paragraph (a)(1)(ii) of this section or to which an equivalent level of safety is certified under paragraph (a)(1)(ii) of this section.

8. In § 21.31, paragraph (d) is revised to read as follows:

§ 21.31 Type design.

* * * * *

(d) Any other data necessary to allow, by comparison, the determination of the airworthiness, noise characteristics, fuel venting, and exhaust emissions (where applicable) of later products of the same type.

9. In § 21.33, paragraph (b)(1) is revised to read as follows:

§ 21.33 Inspection and tests.

* * * * *

(b) Each applicant must make all inspections and tests necessary to determine—

(1) Compliance with the applicable airworthiness, aircraft noise, fuel

venting, and exhaust emission requirements;

* * * * *

10. In § 21.93, paragraph (c) is added to read as follows:

* * * * *

§ 21.93 Classification of changes in type design.

* * * * *

(c) For purposes of complying with Part 34 of this chapter, any voluntary change in the type design of the airplane or engine which may increase fuel venting or exhaust emissions is an "emissions change."

11. In § 21.101, the introductory text of paragraph (a) is revised to read as follows:

§ 21.101 Designation of applicable regulations.

(a) Except as provided in § 23.2 and § 25.2 and Parts 34 and 36 of this chapter, an applicant for a change to a type certificate must comply with either—

* * * * *

12. In § 21.115, paragraph (a) is revised to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of §21.101 and, in the case of an accoustical change described in §21.93(b), show compliance with the applicable noise requirements of §36.7 and §36.9 of this chapter and, in the case of an emissions change described in §21.93(c), show compliance with the applicable fuel venting and exhaust emissions requirements of Part 34.

* * * * *

13. In § 21.183, paragraph (f) is added to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft.

* * * * *

(f) *Fuel Venting and Exhaust Emission Requirements.* Notwithstanding all other provisions of this section, and irrespective of the date of application, no airworthiness certificate is issued, on and after the dates specified in Part 34 for the airplanes specified therein, unless the airplanes comply with the applicable requirements of the part.

14. In § 21.187, paragraph (c) is added to read as follows:

§ 21.187 Issue of multiple airworthiness certification.

* * * * *

(c) The aircraft complies with the applicable requirements of Part 34.

15. Section 21.257 is revised to read as follows:

§ 21.257 Type certificates: Issue.

An applicant is entitled to a type certificate for a product manufactured under a delegation option authorization if the Administrator finds that the product meets the applicable airworthiness, noise, fuel venting, and exhaust emission requirements (including applicable accoustical change or emissions change requirements in the case of changes in type design).

16. In § 21.451, paragraph (d) is revised to read as follows:

§ 21.451 Limits of applicability.

(d) Notwithstanding any other provision of this subpart, a DAS may not issue a supplemental type certificate involving the exhaust emissions change requirements of Part 34 or the acoustical change requirements of Part 36 of this chapter until the Administrator finds that those requirements are met.

PART 23—[AMENDED]

17. The authority citation for Part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

18. In § 23.903, paragraph (a)(1) is revised to read as follows:

§ 23.903 Engines.

(a)(1) Each engine must be type certificated under Parts 33 and 34.

* * * * *

19. In § 23.951, paragraph (d) is added to read as follows:

§ 23.951 General.

* * * * *

(d) Each fuel system for a turbine engine must meet the applicable fuel venting requirements of Part 34.

PART 25—[AMENDED]

20. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

21. In § 25.903, paragraph (a)(1) is revised to read as follows:

§ 25.903 Engines.

(a)(1) Engine type certification. Each engine must be type certificated under Parts 33 and 34.

* * * * *

22. In § 25.951, paragraph (d) is added to read as follows:

§ 25.951 General.

* * * * *

(d) Each fuel system for a turbine engine must meet the applicable fuel venting requirements of Part 34.

PART 45—[AMENDED]

23. The authority citation for Part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

24. In § 45.13, paragraph (a)(7) is redesignated as paragraph (a)(8) and a new paragraph (a)(7) is added to read as follows:

§ 45.13 Identification data.

(a) * * *

(7) On or after January 1, 1984, for aircraft engines specified in Part 34, the date of manufacture as defined in § 34.1 of that part, and a designation, approved by the Administrator of the FAA, that indicates compliance with the applicable provisions of Part 34 and 40 CFR Part 87. Approved indicators include COMPLY, EXEMPT, and NON-US as appropriate.

(i) The designation COMPLY indicates that the engine is in compliance with all of the applicable provisions of Part 34. For any engine with a rated thrust in excess of 26.7 kilonewtons which is not used or intended for use in commerical operations and which is in compliance with all of the applicable provisions of Part 34, but does not comply with the hydrocarbon emissions standard of § 34.21(d), the statement "May not be used as a commerical aircraft engine" must be noted in the permanent powerplant record that accompanies the engine at the time of manufacture of the engine.

(ii) The designation EXEMPT indicates that the engine has been granted an exemption pursuant to the applicable provision of §34.7(a)(1), (a)(4), (b), (c), or (d), and an indication of the type of exemption and the reason for the grant must be noted in the permanent powerplant record that accompanies the engine at the time of manufacture of the engine.

(iii) The designator NON-US indicates that the engine has been granted an exemption pursuant to § 34.7(a)(1), and the notation "This aircraft may not be operated within the United States", or an equivalent notation approved by the Administrator of the FAA, must be inserted in the aircraft logbook, or

alternate equivalent document, at the time of installation of the engine.

(8) Any other information the Administrator finds appropriate.

* * * * *

PART 91—[AMENDED]

25. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

SFAR 27–6 [Amended]

26. By removing SFAR 27–6

27. In § 91.27, paragraph (d) is added to read as follows:

§91.27 Civil aircraft: Certifications required.

* * * * *

(d) No person may operate a civil airplane (domestic or foreign) into or out of an airport in the United States unless it complies with the fuel venting and exhaust emissions requirements of Part 34 of this chapter.

PART 34—[AMENDED]

28. The authority citation for a new Part 34 reads as follows:

Authority: 42 U.S.C. 1857f–10 (Revised Pub. L. 94–604, December 31, 1970); 49 U.S.C. 1348(c), 1354(a), 1421, 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

29. By adding a new Part 34 to read as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

Subpart A—General Provisions

Subpart B—Engine Fuel Venting Emissions (New and In-Use Aircraft Gas Turbine Engines)

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

Subpart D—Exhaust Emissions (In-Use Aircraft Gas Turbine Engines)

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

Subpart H—Test Procedures for Engine Smoke Emission (Aircraft Gas Turbine Engines)

Subpart A—General Provisions

§ 34.1 Definitions.

(a) As used in this part, all terms not defined herein shall have the meaning given them in the Clean Air Act, as amended (42 U.S.C. 7401 et seq.):

"Act" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

"Administrator" means the Administrator of the Federal Aviation Administration or any other officer or employee of the Federal Aviation Administration to whom the authority involved may be delegated.

"Administrator of the EPA" means the Administrator of the Environmental Protection Agency and any other officer or employee of the Environmental Protection Agency to whom the authority involved may be delegated.

"Aircraft" means any airplane for which a U.S. standard airworthiness certificate or equivalent foreign airworthiness certificate is used.

"Aircraft engine" means a propulsion engine which is installed in, or which is manufactured for installation in, an aircraft.

"Aircraft gas turbine engine" means a turboprop, turbofan, or turbojet aircraft engine.

"Class TP" means all aircraft turboprop engines.

"Class TF" means all turbofan or turbojet aircraft engines except engines of Class T3, T8, and TSS.

"Class T3" means all aircraft gas turbine engines of the JT3D model family.

"Class T8" means all aircraft gas turbine engines of the JT8D model family.

"Class TSS" means all aircraft gas turbine engines employed for propulsion of aircraft designed to operate at supersonic flight speeds.

"Commercial aircraft engine" means any aircraft engine used or intended for use by an "air carrier" (including those engaged in "intrastate air transportation") or a "commercial operator" (including those engaged in "intrastate air transportation") as these terms are defined in the Federal Aviation Act and the Federal Aviation Regulations.

"Commercial aircraft gas turbine engine" means a turboprop, turbofan, or turbojet commercial aircraft engine.

"Date of manufacture" means the date on which the individual engine is originally approved by the FAA, or by a foreign country of manufacture, for installation on aircraft.

"Emission measurement system" means all of the equipment necessary to transport the emission sample and measure the level of emissions. This includes the sample system and the instrumentation system.

"Engine model" means all commercial aircraft turbine engines which are of the same general series, displacement, and design characteristics and are usually approved under the same type certificate.

"Exhaust emissions" means substances emitted to the atmosphere from the exhaust discharge nozzle of an aircraft or aircraft engine.

"Fuel venting emissions" means raw fuel, exclusive of hydrocarbons in the exhaust emissions, discharged from aircraft gas turbine engines during all normal ground and flight operations.

"In-use aircraft gas turbine engine" means an aircraft gas turbine engine which is in service.

"New aircraft turbine engine" means an aircraft gas turbine engine which has never been in service.

"Power setting" means the power or thrust output of an engine in terms of kilonewtons thrust for turbojet and turbofan engines and shaft power in terms of kilowatts for turboprop engines.

"Rated output (r0)" means the maximum power/thrust available for takeoff at standard day conditions as approved for the engine by the Federal Aviation Administration, including reheat contribution where applicable, but excluding any contribution due to water injection and excluding any emergency power/thrust rating.

"Rated pressure ratio (rPR)" means the ratio between the combustor inlet

pressure and the engine inlet pressure achieved by an engine operation at rated output.

"Sample system" means the system which provides for the transportation of the gaseous emission sample from the sample probe to the inlet of the instrumentation system.

"Shaft power" means only the measured shaft power output of a turboprop engine.

"Smoke" means the matter in exhaust emissions which obscures the transmission of light.

"Smoke number (SN)" means the dimensionless term quantifying smoke emissions.

"Standard day conditions" means standard ambient conditions as described in the United States Standard Atmosphere 1976, (i.e., temperature = 15 °C, specific humidity = 0.00 kg H 0/ kg dry air, and pressure = 101325 Pa.)

"Taxi/idle (in)" means those aircraft operations involving taxi and idle between the time of landing roll-out and final shutdown of all propulsion engines.

"Taxi/idle (out)" means those aircraft operations involving taxi and idle between the time of initial starting of the propulsion engine(s) used for the taxi and turn on to duty runway.

§ 34.2 Abbreviations.

The abbreviations used in this part have the following meanings in both upper and lower case:

EPA United States Environmental Protection Agency.
FAA Federal Aviation Administration, United States Department of Transportation.
HC Hydrocarbon(s).
hr. Hour(s).
LTO Landing and takeoff
min. Minute(s).
rO Rated output.
rPR Rated pressure ratio.
sec. Second(s).
SP Shaft power.
SN Smoke number.
T Temperature, degrees Kelvin.
TIM Time in mode.
W Watt(s).
o Degree.
% Percent.

§ 34.3 General requirements.

(a) This part provides for the approval or acceptance by the Administrator or the Administrator of the EPA of testing and sampling methods, analytical techniques, and related equipment not identical to those specified in this part. Before either approves or accepts any such alternate, equivalent, or otherwise nonidentical procedures or equipment, the Administrator or the Administrator of the EPA shall consult with the other in determining whether or not the action requires rulemaking under sections 231 and 232 of the Clean Air Act, as amended, consistent with the responsibilities of the Administrator of the EPA and the Secretary of Transportation under sections 231 and 232 of the Clean Air Act.

(b) Under section 232 of the Act, the Secretary of Transportation issues regulations to ensure compliance with this part. This authority has been delegated to the Administrator of the FAA (49 CFR 1.47).

(c) U.S. Airplanes. This Federal Aviation Regulation (FAR) applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have U.S. standard airworthiness certificates.

(d) Foreign Airplanes. Pursuant to the definition of "aircraft in 40 CFR 87.1(c), this FAR applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have foreign airworthiness certificates that are equivalent to U.S. standard airworthiness certificates. This includes only those foreign civil airplanes that, if registered in the United States, would be required by applicable Federal Aviation Regulations to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane. Pursuant to 40 CFR 87.3(c), this FAR does not apply where inconsistent with an obligation assumed by the United States to a foreign country in a treaty, convention, or agreement.

(e) Reference in this regulation to 40 CFR Part 87 refers to Title 40 of the Code of Federal Regulations, Chapter I—Environmental Protection Agency, Part 87, Control of Air Pollution from Aircraft and Aircraft Engines (40 CFR Part 87).

(f) This FAR contains regulations to ensure compliance with certain standards in Environmental Protection Agency (EPA), 40 CFR Part 87. If EPA takes any action, including the issuance of an exemption or issuance of a revised or alternate procedure, test method, or other regulation, the effect of which is to relax, or delay the effective date of, any provision of 40 Part 87 that is made applicable to an aircraft under this FAR, the new related EPA requirement, upon its effective date, is incorporated by reference in this FAR and supersedes the provisions of this FAR that are based on the provisions of 40 CFR Part 87 that were relaxed by such action.

(g) Unless otherwise stated, all terminology and abbreviations in this FAR that are defined in 40 CFR Part 87 have the meaning specified in that part, and all terms in 40 CFR Part 87 that are not defined in that part but that are used in this FAR have the meaning given them in the Clean Air Act, as amended by Pub. L. 91–604.

(h) If EPA, under 40 CFR 87.3(a), approves or accepts any testing and sampling procedures or methods, analytical techniques, and related equipment not identical to those specified in EPA Part 87, this FAR requires a showing that such alternate, equivalent, or otherwise nonidentical procedures have been complied with, and that such alternate equipment was used to show compliance, unless the applicant elects to comply fully with 40 CFR Part 87.

(i) If EPA, under 40 CFR 87.5, prescribes special test procedures for any aircraft or aircraft engine that is not susceptible to satisfactory testing by the procedures in 40 CFR Part 87, the applicant must show the Administrator of the FAA that those special test procedures have been complied with.

(j) Wherever 40 CFR Part 87 requires agreement, acceptance, or approval by the Administrator of EPA, this FAR requires a showing that such agreement or approval has been obtained.

(k) Pursuant to 42 U.S.C. 7573, no state or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless that standard is identical to a standard made applicable to the aircraft by the terms of this FAR.

(l) If EPA, by regulation or exemption, relaxes a provision of 40 CFR Part 87 that is implemented in this FAR, no state or political subdivision thereof may adopt or attempt to enforce the terms of this FAR that are superseded by the relaxed requirement.

(m) If any provision of this FAR is rendered imapplicable to a foreign aircraft as provided in 40 CFR 87.3(c), and § 34.3(d) of this FAR, that provision may not be adopted or enforced against that foreign aircraft by a state or political subdivision thereof.

(n) Continued compliance with the exhaust emissions requirements of this FAR that apply beginning February 1, 1974, January 1, 1976, January 1, 1978, January 1, 1984, and August 9, 1985, is shown for engines for which the type design has been shown to meet those requirements, if the engine is maintained in accordance with applicable maintenance requirements for 14 CFR Chapter I. All methods of demonstrating compliance and all model designations previously having been found acceptable to the Administrator shall be deemed to continue to be an acceptable demonstration of compliance with the

specific standards for which they were approved.

(o) Each applicant must allow the Administrator to make, or witness, any test necessary to determine compliance with the applicable provisions of this FAR.

§ 34.4 Incorporation by reference.

(a) *General.* This Far prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated and are approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 522(a) and 1 CFR Part 51.

(b) *Changes to Incorporated Matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that impacts compliance with standards and procedures will be published in the **Federal Register.**

(c) *Identification Statement.* The complete title or description which identifies each published matter incorporated by reference in this FAR is as follows:

ICAO Annex 16—Environmental Protection, Volume II—Aircraft Engine Emissions, Appendices 2, 3, 5, and 6 dated 18 February 1982, First Edition, June 1981. This document can be obtained from the International Civil Aviation, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada H3A 2R2, at $3.00 per copy.

(d) *Availability for Inspection.* A copy of each publication incorporated by reference in this FAR is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC;

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC;

(3) The respective offices of the Federal Aviation Administration are as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts;

(ii) New York Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581;

(iii) Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349;

(iv) Chicago Aircraft Certification Office, 2300 East Devon, Des Plains, Illinois 60018;

(v) Central Regional Office, 601 East Twelfth Street, Kansas City, Missouri;

(vi) Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas;

(vii) Denver Aircraft Certification Field Office, 10455 East 25th Avenue, Aurora, Colorado 80010;

(viii) Northwest Mountain Regional Office, 17900 Pacific Highway South, Seattle, Washington 98168;

(ix) Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California 90261;

(x) Anchorage Aircraft Certification Field Office, 701 C Street, Anchorage, Alaska 99513;

(xi) Los Angeles Aircraft Certification Office, 4334 Donald Douglas Drive, Long Beach, California 90808;

(xii) Brussels Aircraft Certification Staff, 15 Rue de la Loi, B–1040 Brussels, Belgium;

(xiii) FAA Representative, U.S Embassy, Corner Avenidas Inca Garcillaso de la Vega & Espana, Lima, Peru;

(xiv) FAA Representative, Office of U.S. Consulate General, Avenida Presidente Wilson, 147 Rio de Janeiro, Brazil;

(4) The Office of the Federal Register, Room 8401, 1101 "L" Street, NW., Washington, DC.

§ 34.5 Special test procedures.

The Administrator or the Administrator of the EPA may, upon written application by a manufacturer or operator of aircraft or aircraft engines, approve test procedures for any aircraft or aircraft engine that is not susceptible to satisfactory testing by the procedures set forth herein. Prior to taking action on such application, the Administrator or the Administrator of the EPA shall consult with the other.

§ 34.6 Aircraft safety.

(a) The provisions of this part will be revised if at any time the Administrator determines that an emission standard cannot be met within the specified time without creating a safety hazard.

(b) Consistent with 40 CFR 87.6, if the FAA Administrator determines that any emission control regulation in this Part cannot be safely applied to an aircraft, that provision may not be adopted or enforced, against such aircraft, by a state or political subdivision thereof.

§ 34.7 Exemptions.

General. Notwithstanding Part II of the Federal Aviation Regulations (14 CFR Part 11), all petitions for rulemaking involving either the substance of an emission standard or test procedure prescribed by EPA that is incorporated in this FAR, or the compliance date for such standard or procedure, must be submitted to EPA. Information copies of such petitions are invited by the FAA. Petitions for rulemaking or exemption involving provisions of this FAR that do not affect the substance or the compliance date of an emission standard or test procedure that is precribed by EPA and petitions for exemptions under the provisions for which the EPA has specifically granted exemption authority to the Secretary of Transportation are subject to Part II of the Federal Aviation Regulations (14 CFR Part II).

(a) *Exemptions Based on Flights for Short Durations at Infrequent Intervals.* The emission standards of this part do not apply to engines which power aircraft operated in the United States for short durations at infrequent intervals. Such operations are limited to:

(1) Flights of an aircraft for the purpose of export to a foreign country, including any flights essential to demonstrate the integrity of an aircraft prior to a flight to a point outside the United States.

(2) Flights to a base where repairs, alterations, or maintenance are to be performed, or to a point of storage, and flights for the purpose of returning an aircraft to service.

(3) Official visits by representatives of foreign governments.

(4) Other flights the Administrator determines, after consultation with the Administrator of the EPA, to be for short durations at infrequent intervals. A request for such a determination shall be made before the flight takes place.

(b) *Exemptions for Very Low Production Engine Models.* The emissions standards of this part do not apply to engines of very low production after the date of applicability. For the purpose of this part, "very low production" is limited to a maximum total production for United States civil aviation applications of no more than 200 units covered by the same type certificate after January 1, 1984. Engines manufactured under this provision must be reported to the FAA by serial number on or before the date of manufacture and exemptions granted under this provision are not transferable to any other engine.

(c) *Exemptions for New Engines in Other Categories.* The emissions standards of this part do not apply to engines for which the Administrator determines, with the concurrence of the Administrator of the EPA, that application of any standard under

§ 34.21 is not justified, based upon consideration of:

(1) Adverse economic impact on the manufacturer;

(2) Adverse economic impact on the aircraft and airline industries at large;

(3) Equity in administering the standards among all economically competing parties;

(4) Public health and welfare effects;

(5) Other factors which the Administrator, after consultation with the Administrator of the EPA, may deem relevant to the case in question.

(d) *Time Limited Exemptions for In Use Engines.* The emissions standards of this part do not apply to aircraft or aircraft engines for time periods which the Administrator determines, with the concurrence of the Administrator of the EPA, that any applicable standard under § 34.11(a), or § 34.31(a), should not be applied based upon consideration of the following:

(1) Documentation demonstrating that all good faith efforts to achieve compliance with such standard have been made;

(2) Documentation demonstrating that the inability to comply with such standard is due to circumstances beyond the control of the owner or operator of the aircraft;

(3) A plan in which the owner or operator of the aircraft shows that he will achieve compliance in the shortest time which is feasible;

(4) Applications for exemption from this part shall be submitted in duplicate to the Administrator in accordance with the procedures established by the Administrator in Part II.

(e) The Administrator shall publish in the **Federal Register** the name of the organization to whom exemptions are granted and the period of such exemptions.

(f) No state or political subdivision thereof may attempt to enforce a standard respecting emissions from an aircraft or engine if such aircraft or engine has been exempted from such standard under this part.

Subpart B—Engine Fuel Venting Emissions (New and In-Use Aircraft Gas Turbine Engines)

§ 34.10 Applicability.

(a) The provisions of this subpart are applicable to all new aircraft gas turbine engines of classes T3, T8, TSS, and TF equal to or greater than 36 kilonewton rated output, manufactured on or after January 1, 1974, and to all in-use aircraft gas turbine engines of classes T3, T8, TSS, and TF equal to or greater than 36 kilonewton rated output manufactured after February 1, 1974.

(b) The provisions of this subpart are also applicable to all new aircraft gas turbines of class TF less than 36 kilonewton rated output and class TP manufactured on or after January 1, 1975 and to all in-use aircraft gas turbines of class TF less than 36 kilonewton rated output and class TP manufactured after January 1, 1975.

§ 34.11 Standard for fuel venting emissions.

(a) No fuel venting emissions shall be discharged into the atmosphere from any new or in-use aircraft gas turbine engine subject to the subpart. This paragraph is directed at the elimination of intentional discharge to the atmosphere of fuel drained from fuel nozzle manifolds after engines are shut down and does not apply to normal fuel seepage from shaft seals, joints, and fittings.

(b) Conformity with the standard set forth in paragraph (a) of this section shall be determined by inspection of the method designed to eliminate these emissions.

(c) Compliance with the fuel venting emissions requirements of this section that apply beginning on February 1, 1974, and beginning on January 1, 1975, may be shown by any means of compliance, applied the airframe or the engine, that prevents the intentional discharge of fuel from fuel nozzle manifolds after the engines are shut down. Acceptable means of compliance include the following:

(1) Incorporation of an FAA-approved system that recirculates the fuel back into the fuel system;

(2) Capping or securing the pressurization and drain valve;

(3) Manually draining the fuel from a holding tank into a container.

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

§ 34.20 Applicability

The provisions of this subpart are applicable to all aircraft gas turbine engines of the classes specified beginning on the dates specified in § 34.21.

§ 34.21 Standards for exhaust emissions.

(a) Exhaust emissions of smoke from each new aircraft gas turbine of class T8 manufactured on or after February 1, 1974, shall not exceed: Smoke number of 30.

(b) Exhaust emissions of smoke from each new aircraft gas turbine engine of class TF and of rated output of 129 Kilonewtons thrust or greater, manufactured on or after January 1, 1976, shall not exceed:

$SN = 83.6\ (rO)^{-0.274}$ (rO is in kilonewtons).

(c) Exhaust emission of smoke from each new aircraft gas turbine engine of class T3 manufactured on or after January 1, 1978, shall not exceed: Smoke number of 25.

(d) Gaseous exhaust emissions from each new commercial aircraft gas turbine engine that is manufactured on or after January 1, 1984, shall not exeed:

(1) Classes, TF, T3, T8 engines equal to or greater than 26.7 kilonewtons rated output:

Hydrocarbons: 19.6 grams/kilonewton rO.

(2) Class TSS:

Hydrocarbons: $140(0.92)^{rPR}$ grams/kilonewton rO.

(e) Smoke exhaust emissions from each gas turbine engine of the classes specified below shall not exceed:

(1) Class TF of rated output less than 26.7 kilonewtons manufactured on or after August 9, 1985:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons) not to exceed a maximum of SN = 50.

(2) Classes T3, T8, TSS, and TF of rated output equal to or greater than 26.7 kilonewtons manufactured on or after January 1, 1984:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons) not to exceed a maximum of SN = 50.

(3) Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN = 187(rO)^{-0.168}$ (rO is in kilowatts).

(f) The standards set forth in paragraphs (a), (b), (c), (d), and (e) of this section refer to a composite gaseous emission sample representing the operating cycles set forth in the applicable sections of Subpart G of this part, and exhaust smoke emissions emitted during operations of the engine as specified in the applicable sections of Subpart H of this part, measured and calculated in accordance with the procedures set forth in those subparts.

Subpart D—Exhaust Emissions (In-Use Aircraft Gas Turbine Engines)

§ 34.30 Applicability.

The provisions of this subpart are applicable to all in-use aircraft gas turbine engines certificated for operation within the United States of the classes specified beginning on the dates specified in § 34.31.

§ 34.31 Standards for exhaust emissions.

(a) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class T8, beginning February 1, 1974, shall not exceed: Smoke Number of 30.

(b) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class TF and of rated output of 129 kilonewtons thrust or greater, beginning January 1, 1976, shall not exceed:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons).

(c) The smoke standards set forth in paragraphs (a) and (b) of this section refer to exhaust smoke emissions emitted during operation of the engine as specified in the applicable sections of Subpart H of this part, and measured and calculated in accordance with the procedure set forth in those subparts.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

§ 34.60 Introduction.

(a) Except as provided under § 34.5, the procedures described in this subpart shall be the test program to determine the conformity of new aircraft gas turbine engines with the applicable standards set forth in this part.

(b) The test consists of operating the engine at prescribed power settings on an engine dynamometer (for engines producing primarily shaft power) or thrust measuring test stand (for engines producing primarily thrust). The exhaust gases generated during engine operation are sampled continuously for specific component analysis through the analytical train.

(c) The exhaust emission test is designed to measure hydrocarbons, carbon monoxide and carbon dioxide concentrations, and to determine mass emissions through calculations during a simulated aircraft landing-takeoff cycle (LTO). The LTO cycle is based on time in mode data during high activity periods at major airports. The test for propulsion engines consists of at least the following four modes of engine operations: Taxi/idle, takeoff, climbout, and approach. The mass emission for the modes are combined to yield the reported values.

(d) When an engine is tested for exhaust emissions on an engine dynamometer or test stand, the complete engine shall be used with all accessories which might reasonably be expected to influence emissions to the atmosphere installed and functioning, if not otherwise prohibited by § 34.62(a)(2). Use of service air bleed and shaft power extraction to power auxiliary, gearbox-mounted components required to drive aircraft systems is not permitted.

(e) Other gaseous emissions measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator or the Administrator of the EPA.

§ 34.61 Turbine fuel specifications.

For exhaust emission testing, fuel meeting the specifications listed below shall be used. Additives used for the purpose of smoke suppression (such as organometallic compounds) shall not be present.

SPECIFICATION FOR FUEL TO BE USED IN AIRCRAFT TURBINE ENGINE EMISSION TESTING

Property	Allowable Range of Values
Specific gravity at 15°C	0.78–0.82
Distillation temperature, °C:	
10 percent boiling point	160–201
Final boiling point	240–285
Net heat of combustion, kJ/Kg	42,860–43,500
Aromatics, volume (percent)	15–20
Naphthalenes, volume (percent)	1.0–3.0
Smoke point, mm	20–28
Hydrogen, mass (percent)	13.4–14.0
Sulphur, mass (percent)	Less than 0.3 pct.
Kinematic Viscosity at —20°C, mm/s	4.0–6.5

§ 34.62 Test procedure (propulsion engines).

(a)(1) The engine shall be tested in each of the following engine operating modes which simulate aircraft operation to determine its mass emission rates. The actual power setting, when corrected to standard day conditions, should correspond to the following percentages of rated output. Analytical correction for variations from reference day conditions and minor variations in actual power setting should be specified and/or approved by the Administration:

Mode	Class		
	TP	TF, T3, or T8	TSS
Taxi/idle	(1)	(1)	(1)
Takeoff	100	100	100
Climbout	90	85	65
Descent	NA	NA	15
Approach	30	30	34

[1] Paragraph (a) (2) of this section.

(2) The taxi/idle operating modes shall be carried out at a power setting of 7 percent rated thrust unless the Administrator determines that the unique characteristics of an engine model undergoing certification testing at 7 percent would result in substantially different HC emissions than if the engine model were tested at the manufacturers recommended idle power setting. In such cases the Administrator shall specify an alternative test condition.

(3) The times in mode (TIM) shall be as specified below:

Mode	Class		
	TF	TF, T3 or T8	TSS
Taxi/idle	20.0 min.	26.0 min.	26.0 min.
Takeoff	0.5	0.7	1.2
Climbout	2.5	2.2	2.0
Descent	N/A	N/A	1.2
Approach	4.5	4.0	2.3

(b) Emissions testing shall be conducted on warmed-up engines which have achieved a steady operating temperature.

§ 34.63 [Reserved]

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be specified by Appendices 3 and 5 to Volume II—Aircraft Engine Emissions of ICAO Annex 16, 18 February 1982, First Edition, June 1981, which are incorporated herein by references as indicated in § 34.4(c).

§ 34.65–34.70 [Reserved]

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle as grams/kilowatt/cycle in calculated in § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to Volume II—Aircraft Engine Emissions, of ICAO Annex 16—Environmental Protection, 18 February 1982, First Edition, June 1981, incorporated herein by reference as indicated in § 34.4(c). Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

Subpart H—Test Procedures for Engine Smoke Emission (Aircraft Gas Turbine Engines)

§ 34.80 Introduction.

Except as provided under § 34.5, the procedures described in this subpart shall be the test program to determine the conformity of new and in-use gas turbine engines with the applicable standards set forth in this part. The test is essentially the same as that described in §§ 34.60–34.62, except that the test is designed to determine the smoke emission level at various operating points representative of engine usage in aircraft. Other smoke measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator or the Administrator of the EPA.

§ 34.81 Fuel specifications.

Fuel having specifications as provided in § 34.61 shall be used in smoke emission testing.

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified by Appendix 2 to Volume II—Aircraft Engine Emissions, of ICAO Annex 16, Environmental Protection, 18 February 1982, First Edition, June 1981, incorporated herein by reference as indicated in § 34.4(c).

§ 34.83–34.88 [Reserved]

§ 34.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to Volume II—Aircraft Engine Emissions, of ICAO Annex 16—Environmental Protection, 18 February 1982, First Edition, June 1981, incorporated herein by reference as indicated in § 34.4(c). Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

Issued in Washington, DC, on May 16, 1988.

James E. Densmore,

Deputy Director of Environment and Energy.

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federal register

Monday
May 23, 1988

Part V

The President

Proclamation 5825—National Rural Health Awareness Week, 1988

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5825 of May 19, 1988

National Rural Health Awareness Week, 1988

By the President of the United States of America

A Proclamation

During National Rural Health Awareness Week, we can be grateful for the significant progress made over the years by countless devoted Americans in providing rural health care. We should remember as well, however, the continuing need for citizens to redouble their efforts in this regard.

A quarter of all Americans live in the towns, villages, and farms of rural America. Their location in remote areas with frequently limited transportation, together with their employment on the land and in forests, mines, and factories, presents continuing and sometimes formidable obstacles to the delivery of health services. For instance, rural areas are finding it hard to attract enough health care providers; just 12 percent of our physicians and a declining number of professional nurses and providers of long-term care currently serve our more than 50 million rural citizens.

Fortunately, dedicated Americans are striving to overcome challenges and make good health care, including the benefits of our ever-increasing knowledge about health, nutrition, and disease and the advantages of rapidly evolving medical technology, accessible to rural citizens. Further such efforts, and further enhancement of public awareness of rural health care needs, will reaffirm our commitment to the well-being of rural citizens.

The Congress, by Senate Joint Resolution 254, has designated the week of May 15 through May 21, 1988, as "National Rural Health Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 15 through May 21, 1988, as National Rural Health Awareness Week, and I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.